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THE
JUSTICE OF THE PEACE,
AND
COUNTY & TOWNSHIP OFFICER,
IN THE
PROVINCE OF NOVA SCOTIA.
BEING
A GUIDE
TO SUCH JUSTICE AND OFFICERS IN THE DISCHARGE OF
THEIR OFFICIAL DUTIES.

By JOHN GEORGE MARSHALL, Esquire,
CHIEF JUSTICE OF THE COURTS OF COMMON PLEAS, AND PRESIDENT
OF THE SESSIONS IN THE ISLAND OF CAPE BRETON.



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REPORT OF THE SECRETARY

OF THE BOARD OF TRADE

FOR THE YEAR 1881

BY THE SECRETARY

JOHN W. L. BARNES

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PREFACE.

THE greatest civil blessings which any people can enjoy, are, a wise and just system of Laws, and their enlightened and faithful administration. On these, more than on any other political advantages, public prosperity and happiness must depend. But for securing this favourable result, these two advantages must unite. The first, however excellent in itself, and pleasing as a matter of mere contemplation, is, when alone, insufficient for the purpose. It is, indeed, by the wise and vigilant application of such a system, not only that the happy effect is produced, but that the laws become the most generally known, and most truly appreciated. The inhabitants of this Colony, possess a very fair portion of the first of those blessings. Although some parts of our Legal Code will admit of considerable correction and improvement, yet upon the whole, there is in this branch of our social system, no very serious ground for dissatisfaction or complaint. Favoured with the chief privileges and advantages of a Constitution, long and generally acknowledged to be one of the best which has ever existed, for securing the blessing of rational freedom; and enjoying the protection of a mild and tolerant Government, we have far less need of any general alteration or improvement in legal regulations and establishments, in order to political prosperity, than we have for a more extended diffusion of the knowledge of the Laws, now in existence, and with regard to many of them, a more extensive and active application. On this last point, especially, it must be admit-

ted, there is, in this Province, a very prevailing and injurious defect, as far as the first steps in any criminal procedure, or the summary execution of legislative enactments, depend on persons in the Commission of the Peace, or other local officers. This may be very well accounted for, and fairly excused, from a variety of circumstances, without imputing any criminal intention or neglect. The situation of such Magistrates and Officers in this country is widely different in many particulars, from that of the same persons in much older countries, and especially in our parent state. In that favoured land, a knowledge and observance of the laws in general, and of the various local regulations, are perpetuated from one generation to another, so that each grows up, familiar with their existence and operation. Then, as to Gentlemen, there, in the Commission of the Peace, very many of them are persons of liberal or good education, and of early and extensive information respecting the Laws in general; and many others are so wealthy or independent in their circumstances, as to be able to afford leisure for acquiring the requisite knowledge relating to their office, and for the active discharge of its duties. In this comparatively infant country, our system of jurisprudence is not yet, on some points, accurately defined or established. Many enactments are but of recent origin, others are transient or fluctuating, while the numerous varieties in the description and characteristics of our population, and its continual increase from different countries, tend, in a great measure, to prevent any general knowledge or observance of the laws.

With regard to our Magistrates, although in general selected from the most suitable persons, yet the greater number, as may reasonably be supposed, are but of ordinary education and attainments, and nearly all, from necessity, being actively engaged in private avocations, they have but little leisure for

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PREFACE.

the acquisition of any particular knowledge of the Laws. Moreover, with most of them, the means for obtaining that knowledge are extremely limited. The English Works on the office of a Justice of the Peace, are in general voluminous and expensive, and can but rarely be procured in this country; and, comparatively, but a small part of them are of any practical use to our Magistrates, especially with reference to any Provincial enactments. No publication for their general information and guidance has yet been afforded in the colony. The work by Mr. Murdoch, although valuable and generally useful, has, evidently, not been designed to be one of that description. It is chiefly an exhibition of our Statutes in general. Now, as a very considerable part of the authority and duties of Justices of the Peace arises out of the Common and Statute Law of England, and as Precedents or Forms for their use, are of essential importance, it follows, that a work of that nature cannot form a complete and universal guide for the discharge of the almost endless variety of their duties. Then, as to the Provincial Statutes, but few of our Magistrates possess all the volumes containing them. Some have but one volume, others two, but are deficient of the rest; and indeed, as to the first volume, it can but rarely be procured. Besides, it must candidly be admitted, that on several subjects, in which the duties of Justices are involved, our Statutes are in such a defective, or intricate state, that it requires the close application of a person skilled and exercised in legal investigations, to reconcile or rightly understand them. It cannot, therefore, reasonably be expected, that plain persons, of ordinary attainments, and actively engaged in private pursuits, should either be fitted, or will afford time, for such an unprofitable and unpleasant occupation.

Owing to these unfavorable circumstances, many of our Magistrates remain generally uninformed as to the nature and

extent of their authority, and the due and effective discharge of their duties ; and in consequence, very frequently, when applied to, delay or decline to act, from a want of information as to their powers, or through a fear of erring, or from being at a loss in what manner to proceed. Also, on many occasions, when they commence an exercise of their authority, on meeting with embarrassments and difficulties, they feel compelled or induced, from the same causes, to stop short of its full and effectual exertion.

The concurrence of these disadvantages and evils, prevents any general diffusion of the knowledge of the penal part of our Laws ; while a disregard or contempt for the authority of Magistrates, is engendered and perpetuated, so that the daring violator of social regulations, or the rights of individuals, often proceeds in his course of transgression, without the fear or infliction of penal consequences.

Considering all these unfavorable circumstances, it seems highly important and requisite, that some work should be afforded for the special information and guidance of our Magistrates ; particularly, as the sphere of their duties is continually increasing.

The present Publication is intended to answer that purpose. It was designed, and would have been executed some years ago, but was postponed, from a desire that the proposed revision and consolidation of the Provincial Statutes, should previously take place. It is much to be regretted that this most desirable object has not yet been accomplished, although two Legislative enactments have, at different periods, been made for the purpose.

A digression may here be excused, for the purpose of remarking, that this measure seems particularly requisite with reference to some of the higher branches of our Criminal Code, in which the severity of the punishment appears disproportion-

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ed to the offence. These instances of the kind may be mentioned, in which death is adjudged in every case of maliciously burning a cock of hay, or stack of straw or wood,—breaking down a dyke or bank of a river, whereby lands are overflowed,—or personating bail. In none of these cases, is it in the least degree probable, or even imagined by any one, that such punishment will ever take place. Such enactments, therefore, cannot be said to avail, even for the purpose of intimidation or restraint; although they may often give rise to invidious and unjust reflections on the whole of our Criminal Code. Such a revision would doubtless also lead to a more full discovery of *this* important defect in many of our Statutes,—that although it is directed that the penalties thereby imposed shall be recovered before Justices, no final process whatever is mentioned or referred to, for enforcing the payment, or inflicting any other punishment. It being clear, that in cases of this kind, no such process can be issued, such enactments are, in effect, little else than nugatory.

As there is still no prospect of such a general revision of our Statutes, it has been thought best, that the publication of the present Work should no longer be delayed, and, accordingly, it is now most respectfully offered for public inspection and use.

The plan of it, is simply this;—It professes to combine the Common and Statute Law of England, with all our own Legislative Enactments, relating, or in any way referring to the office and duties of a Justice of the Peace in this Province.

With reference to the execution of the work, it is proper, that on some parts of it, brief information should here be afforded. In the first place, it must be observed, that it is almost exclusively intended for the use of Magistrates when required to act *out of Sessions*. It was thought unnecessary to treat of their proceedings when convened in General Sessions, by rea-

son that Gentlemen selected from the legal profession, are now presiding in those Courts, where, in general, the Magistrates of the most ability and intelligence are assembled, and where reference can always be had, to some of the valuable English Publications which treat of the proceedings in Sessions, as well as to the whole of the Provincial Statutes ; and also, as time and facilities are there afforded for the full and deliberate consideration of every matter. Moreover, it was thought desirable to confine the Work within the most moderate compass, consistent with all needful information to Magistrates. On some points, however, proceedings in the Sessions are treated of.

With regard to the Provincial Statutes which concern the duties of Magistrates, it has been deemed sufficient to recite only such of them, or such parts thereof, as are now in force. It may therefore be taken for granted, that every enactment of that nature, which is not set forth in this work, has either been expressly or virtually repealed, or entirely altered or annulled.

Neither has it been thought requisite, except in two or three instances, to recite or mention any Acts which are merely of a local description.

The duration of a Statute, as to being *perpetual* or only *temporary*, is almost invariably noted at the close of its recital.

In general where any subject has been found to branch out into a number of parts, such an order of treating it has been adopted, and such divisions have been made, that all the enactments and information relating to each part, or having a bearing upon it, are brought together under one view ; so that the reader may be saved the trouble of a reference to any other division or Title.

For every principle and position which is stated, the authority is given, and with regard to the Provincial Enactments, especially, wherever there has appeared to be reason for doubt or uncertainty as to their intention or construction, or the pro-

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ceedings to be had under them, the same have been noticed ; and in such cases the Author has but seldom felt himself at liberty to express any decided opinion.

With reference to instructions for the guidance of Justices, and as to Precedents or Forms, in order to keep the Work within the most moderate and convenient limits, instead of setting them forth, particularly, and in nearly the same words, under a great variety of Titles, it was thought sufficient, on a number of subjects, to refer to the general instructions and Forms given under certain comprehensive Titles ; and which will be found to apply and serve in all cases of the same general class. This has been done, especially, with regard to Informations or Complaints,—Writs of Summons,—Warrants and Commitments.

Finally, it is thought no presumption to say, that full reliance may safely be yielded, as to accuracy with respect to recitals and references, and particularly, as to *all* the Provincial Enactments being set forth, which are requisite to be recited or mentioned. The Author feels, that on these points he has no cause for anxiety or apprehension. He has, again and again, carefully and minutely examined and collated the several Provincial Acts, having any relation or reference to the office or duties of a Justice of the Peace ; and having, for many years, been extensively and actively engaged in the discharge of those duties, and also, having for some time had this Work in contemplation, he has felt the more encouraged in proceeding to its completion, and in giving it publicity.

As it was not in his power to obtain any assistance from friends, by suggestion or otherwise, he has, on that score, no acknowledgments to offer. Whatever may be the defects of the Work, he alone must bear the blame of them, while the knowledge that it is found useful, which he trusts will be the case, will yield him very high and enduring gratification.

INTRODUCTION.

CONSISTING OF TWO PARTS.

CONTAINING,

- I. CERTAIN ABBREVIATIONS MADE USE OF IN THIS WORK.
- II. SOME GENERAL RULES TO BE OBSERVED IN THE CONSTRUCTION OF STATUTES OR ACTS OF PARLIAMENT.

I. CERTAIN ABBREVIATIONS MADE USE OF IN THIS WORK.

IN order to keep the Book within a limited compass, the following Abbreviations are made use of :—

1. The word *Justice* is always to be understood to mean *Justice*.
Justice of the Peace, when not otherwise expressed.
2. The words *one Justice* shall be understood to signify *One Justice*.
one or more Justices, so that what is directed to be done by one, shall not be intended thereby to exclude others from joining with him.
3. In like manner, *two Justices*, when not otherwise expressed, shall be understood to signify *two Justices or more*. *Two Justices*.
4. So also a conviction on the oath of *one witness*, shall be understood to denote *one witness or more*. *One Witness*.
5. And *two witnesses*, shall denote *two or more witnesses*. *Two Witnesses*.
6. The *Justices in Sessions* shall signify the said *Justices*. *Majority*.
ces, or the major part of them.
7. The word *Sessions* shall denote the *General Sessions*, if not otherwise expressed. *Sessions*.
8. The word *Warrant* shall always signify, *Warrant under hand and seal*, where not expressed otherwise. *Warrant*.
9. The word *Overseer* shall be understood to mean *Overseer of the poor*, where not expressed otherwise. *Overseer*.

- Poor. 10. Where a penalty, or part thereof, is expressed to be given to the *poor*, that shall always be understood to denote, *the poor of the township where the offence was committed*, if not otherwise limited.
- Penalty. 11. Where a penalty is to be recovered before the Justices of the Peace, it is thought indispensable to insert particularly the manner of recovering the same ; but where it is to be sued for in any of His Majesty's Courts of Record, it is judged not necessary to set forth the special method of procedure there ; and generally, where it is expressed that a person shall do, or not do such a thing, on pain of such a sum, without more, it shall be understood, that such penalty is not recoverable before the Justices of the Peace, but only in the Supreme Court, or the Courts of Common Pleas.
- Overplus. 12. In all cases of *distress and sale*, it shall be understood, that the *overplus* must be returned to the owner, after the sum or sums to be thereout deducted, shall be satisfied and paid.
- Lands. 13. *Lands* shall be understood to stand for *lands, tenements, and hereditaments*.
- Blank Spaces. 14. In the blank spaces for the names in the precedents, instead of inserting initial letters arbitrarily, it is thought it may be some help to the memory, that A. O. shall signify the Offender ; A. I. the Informer ; A. W. the Witness ; A. M. the Justice of the Peace, and the like.
- Figures. 15. Also for brevity's sake, sums of money and other numbers are sometimes expressed by figures, and not in words at length ; but it is to be remembered, that in the Forms of Warrants, Convictions, and other proceedings before the Justices, they ought to be expressed in words at length, and not in figures.
- Continuance of Statutes. 16. Where a Statute is said to be in force until such a day, month, and year, &c. it shall always be understood to imply,—*and from thence to the end of the then next Session of the Legislature*.
- Citing of Statutes. 17. In reference to Statutes, it is judged sufficient for the understanding thereof, to quote those passed in the Provincial Legislature, in the following manner, *viz.*—

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32 G. 2, c. 13, § 18. 1 V. 17, to signify, the Provincial Statute made in the thirty-second year of the Reign of King George the Second, Chapter the thirteenth, Section the eighteenth, and contained in the first Volume of the Provincial Statutes, at page seventeen. All Statutes not so designated, are to be considered *English Statutes*.

In order to keep the Work within the smallest compass, consistent with all due information and reference, it is judged not to be needful to prefix a table explanatory of the Abbreviations in the names of books and cases cited as authorities, or occasionally noticed ; especially, as all such are either of such long standing, and well known authority, or of such modern date, and so frequently referred to, that the Abbreviations are perfectly familiar to every Gentleman of the Law ; and with regard to the Gentlemen in the Commission of the Peace, for whose use the Work is chiefly designed, with but very few exceptions, they do not possess the means of referring to such books and cases, and therefore to them, such a table would be useless.

Abbreviations

II. SOME GENERAL RULES TO BE OBSERVED IN THE CONSTRUCTION OF STATUTES OR ACTS OF PARLIAMENT.

TO avoid the very frequent repetition of the same observations, it is thought proper to premise the following general rules, to be observed in the construction of Statutes or Acts of Parliament.

1. Regularly, a Statute in the affirmative doth not repeal a precedent affirmative Statute. 11 *Rep.* 61. But if the latter be contrary to the former, it amounts to a repeal of the former. 1 *Ld. Raym.* 160.

How far an Affirmative repeals an Affirmative Statute.

2. A Statute made in the affirmative, without any negative expressed or implied, doth not take away the common law ; and therefore the party may waive his benefit by such Statute, and take his remedy by the common law. 2 *Inst.* 200.

How far an Affirmative Statute alters the Common Law.

3. By repealing of a repealing Statute, the first Statute

Repealing a
repealing Statute.

is revived. *Readings upon the Statutes Parl.* If an Act of Parliament be revived, all Acts explanatory of that Act so revived, are revived also. 2 *Burr.* 747. If a Statute expire, and afterwards be revived again by another Statute, the law derives its force from the first. 4 *T. R.* 109.

Special power
to be pursued.

4. Regularly, where an Act of Parliament gives a power or interest to one person certain, by this express designation of one, all others are excluded. 11 *Rep.* 59, 64.

Power to ad-
minister an
Oath.

5. In all cases where Justices may take examinations, or other accusation or proof, though the Statute doth not expressly set down that it shall be upon oath, yet it shall be intended that it shall be upon oath. *Dall. c.* 115.

In what cases
the Sessions
may execute
the power given
to two Jus-
tices.

6. Generally, it is holden, that where a Statute appoints a thing to be done by one or more Justices, without giving any appeal to the Sessions; there, the Justices in Sessions may do that thing; but where an appeal is given to the Sessions, the Justices in Sessions cannot proceed originally therein, because that method would take away the power of appealing.

How far an
Indictment
will lie where
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tion is ap-
pointed.

7. Where a Statute makes a new offence, which was no way prohibited by the Common Law, and appoints a particular manner of proceeding against the offender, as by a commitment, or action of debt, or information, without mentioning an indictment, it seems to be settled at this day, that it will not maintain an indictment, because the mentioning the other methods of proceeding only, seems impliedly to exclude that of indictment: yet it has been adjudged, that if such Statute gave a recovery by action of debt, bill, plaint, information, or otherwise, it authorises a proceeding by way of indictment. 2 *Haw. c.* 25, § 4.

And if there be a prohibitory clause in the Act, the offender may be indicted upon the prohibitory clause, notwithstanding the penalty: but otherwise it is, where the Act is not prohibitory, but only inflicts the forfeiture, and specifies the remedy. 2 *Hale*, 171. 1 *Burr.* 543.

But where the offence was antecedently punishable by a common law proceeding, and a Statute prescribes a particular remedy by a summary proceeding; there, either method may be pursued, and the prosecutor is at liberty to proceed either

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INTRODUCTION.

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at common law, or in the method prescribed by the Statute ; because in that case the sanction is cumulative, and doth not exclude the common law proceeding. *2 Burr.* 803.

8. But every contempt of a Statute is indictable, where no other punishment is limited. *1 Haw. c. 22, § 5.*

9. And wheresoever an Act of Parliament doth generally prohibit any thing, the party grieved shall not only have his action for his private relief, but the offender shall be punished at the King's suit for the contempt of the law. *2 Inst.* 163.

10. All actions, indictments, or informations, on penal Statutes, for any forfeiture limited to the King, shall be brought within two years after the offence committed ; if limited to the King and prosecutor, then within one year ; and if it is not sued for within that one year, then the King may sue for the same within two years after the expiration of that one year ; and not otherwise. *31 El. c. 5, § 5.* That is to say, unless where it is otherwise specially directed by subsequent Statutes.

11. The preamble or rehearsal of a Statute is deemed true ; and therefore good arguments may be drawn from the preamble. *1 Inst.* 11.

But the preamble shall not restrain the operation of the enacting part ; as where the preamble recites only a particular inconvenience, this shall not hinder a subsequent enacting clause from being understood in that more general sense which the words would otherwise and of themselves import, so as to take in other inconveniences of the like kind, although not specified in the preamble. *8 Mod.* 144. *1 P. Wm.* 320.

12. Where a Statute directs the doing of a thing, for the sake of justice, or the public good, the word *may* is the same as the word *shall* : as where the Statute of the 13 & 14 Ch. 2, c. 12, enacts that the Overseers may make a rate to reimburse the constables, this is construed they *shall* ; for they are compellable so to do. *2 Salk.* 609.

13. Where a Statute directs a penalty to be recovered in any Court of Record ; this shall not be intended of the Quarter Sessions, unless it be specially named in such Statute ; but only of the Superior Courts of Record. *6 Rep.* 19, 20. *2 Hale,* 29, 30.

Where no method of prosecution is appointed. Where the defendant may be prosecuted both by the King and the party grieved. In what time prosecution shall be, on penal Statutes

Preamble.

“ May do ” such a thing, how to be understood.

Court of Record.

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Power to con-
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Necessity of
summoning
the party.

Two Justices
to be both to-
gether.

Informer's
Oath.

Confession.

Discretionary
power.

14. It is a general rule in the construction of Statutes, that where things of an inferior degree are first mentioned, those of a higher dignity shall not be included under general subsequent words. 2 Rep. 46. 2 Hawk. c. 27, § 124.

15. Where a Statute gives power to the Justices to require any person to do a thing, as to take the oaths, the law impliedly gives them power to issue their precept to have the body before them; for when the law grants any thing to any one, that also is granted, without which the thing itself cannot be; and it is against the office of the Justices, and the authority given them by the law, that they shall go and seek the parties. 12 Rep. 130; 131.

16. Where a Statute gives power to the Justices of the Peace, to hear and determine an offence in a summary way, it is necessarily implied and supposed, as a part of natural justice, that the party be first cited, and have opportunity to be heard and answer for himself. 1 Haw. c. 64, § 60.

17. Where an Act of Parliament gives power to two Justices, finally to hear and determine an offence, it is necessarily supposed that they shall be both together, or which is the same thing in other words, that they shall hold a Special Sessions for that purpose. And the like is, when they are to do any other judicial act, as to make an order of bastardy, or adjudge the settlement of a poor person. 1 Burn's, Intr. 24.

18. Where a Statute appoints a conviction to be on the oath of one witness, this ought not to be by the single oath of the informer; for if the same person shall be allowed to be both prosecutor and witness, it would induce profligate persons to commit perjury for the sake of the reward. 2 Ld. Raym. 1545.

19. Where a Statute directs, that a person shall be convicted of an offence upon the oath of one or more witnesses, and says nothing of the confession of the party; yet if the offender shall before the Justice confess the offence, he may be convicted upon such confession; for confession is stronger evidence than the oath of witnesses. Dalt. 109, 162. 1 Str. 546.

20. Where an Act of Parliament gives power to the Justices of the Peace, to take order in any matter according

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to their discretions ; this shall be understood according to the rules of reason, law, and justice, and not by private opinion. 5 Rep. 100. 8 How. St. Tr. 55.

21. It may be laid down as an invariable rule, that the law favours liberty ; so that in the construction of a penal Statute, where the interpretation is dubious, that sense must be pursued (all other things being equal,) which is more beneficial to the subject, or the party suffering. Thus, where an Act directs, that the Justices shall commit an offender to prison for twelve months, the Justices may not alter the words and commit him for a year ; for in this respect *twelve months* and *one year*, are not the same : but the months must be computed at twenty-eight days to the month, and not as calender months, unless it be so expressed in the Act. Construction of Penal Statutes

22. In all cases wherein an oath shall be required, the solemn affirmation of Quakers shall be allowed instead of such an oath, with this exception, however, that no Quaker shall be allowed to give evidence in any criminal causes, by such solemn affirmation. By the 33 G. 2, c. 2. 1 V. 48. Quakers' affirmation.

23. To say that a person shall *forfeit* generally, or that he shall *forfeit to the King*, is all one, for the King shall have every forfeiture not otherwise limited. 11 Rep. 60. Forfeiture.

Except where a forfeiture is *given in lieu of property and interest*, for there it shall go to the party injured. 1 Roll. Rep. 90.

For wheresoever a Statute gives a forfeiture or penalty against him who wrongfully detains or dispossesses another of his duty or interest ; in that case, he that hath the wrong, shall have the forfeiture or penalty, and shall have an action for the same, upon the Statute, and the King shall not have the forfeiture in that case. 1 Inst. 159.

24. It is said that wheresoever a Justice of the Peace is empowered by any Statute, to bind a person over, or to cause him to do a certain thing, and such person, being in his presence, shall refuse to be bound, or to do such thing ; the Justice may commit him to the gaol, to remain there until he shall comply. 2 Haw. c. 16, § 2. Where a power of commitment is implied.

25. When a Statute appoints imprisonment, but limits no time when ; it shall be immediately. 8 Rep. 119. Imprisonment when.

Imprisonment
how long.

26. When a Statute appoints imprisonment, but limits no time how long ; the prisoner in such case must remain at the discretion of the Court. *Dalt.* 410.

Statute making an offence felony.

27. Wherever a Statute makes any offence *felony*, it incidently gives it all the properties of felony at common law. 1 *Haw. c.* 38, § 18.

Misprision.

28. Therefore, an Act of Parliament that makes an offence felony, doth consequently introduce the punishment of concealing, that is, misprision of felony ; and every offence made felony by Act of Parliament, includes misprision. 1 *Hale*, 708.

Infants.

29. An Act making a new felony, extends not to infants under fourteen years of age ; but if they be of that age it binds them. 1 *Hale*, 706. 1 *Russ.* 8.

Doubtful words not to make felony.

30. An offence shall never be made felony, by the construction of any doubtful and ambiguous words of a Statute ; but in every such case, it shall amount unto no more than a high misdemeanor, punishable by imprisonment, or the like. 1 *Haw. c.* 40, § 2.

Benefit of Clergy.

31. All felonies by the common law have the benefit of clergy ; therefore, where a Statute enacts a felony, and says, the offender shall suffer death, clergy lies notwithstanding, and is never ousted without express words. 3 *Inst.* 73. 2 *Haw. c.* 33, § 24.

Forfeiture of dower.

32. Saving of *dower*, in a Statute making an offence felony, is superfluous ; for by the 1 Ed. 6, c. 12, § 17, dower is not lost by the felony of the husband.

Damages.

33. Upon an indictment or other criminal prosecution, no *damages* can be given to the party grieved, but it is every day's practice in the Court of King's Bench, to induce defendants to make satisfaction to the prosecutors, by intimating an inclination on that account to mitigate the fine due to the King. 2 *Haw. c.* 25, § 3.

Treble damages.

34. Where a Statute gives *treble damages*, the Justices are not to assess the damages, and then treble them ; but the Jury ought to find the damages, and then the Justices are to treble them. *Cro. Car.* 449.

Distress and Sale.

35. In all cases where a Justice is required by any Sta-

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tute, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed by such Statute to be paid, it will be proper for such Justice granting the warrant, therein to order and direct the goods distrained to be sold within a certain time limited in such warrant, (if no particular time for the sale is specified in such Statute,) so as such time limited in the warrant, be not less than four days, nor more than eight days, unless such penalty or sum of money, together with reasonable charges of taking and keeping the distress, be sooner paid. And the Officer making such distress, may deduct the reasonable charges of taking, keeping, and selling the said distress; and the overplus (if any,) shall be returned to the owner.

36. An Act inflicting a penalty for a *second offence*, must always be understood, after conviction and judgment for the first offence; and the second offence must be committed after the first conviction, and judgment thereupon given: for it doth not appear to be an offence, until judgment by proceeding of law be given against the offender.

And the indictment for a second offence, must recite the record of the first conviction; and upon the evidence, the *record* of the first conviction must be proved: but the *matter* of the first conviction, shall never be re-examined, but must stand for granted. 1 *Burn's Introdu.* 26, 7.

37. By the 10 G. 4, c. 26, 4 V. 49, "The Clerk of His Majesty's Council in General Assembly, shall endorse, in English, on every Act of the General Assembly, the date, month, and year, when the same shall have passed; and such endorsement shall be taken to be a part of such Act, and to be the date of its commencement, when no other commencement shall be therein provided." *Perpetual.*

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TABLE

OF THE

NAMES OF TITLES.

	Page.		Page.
ABSENTEES,	1	CONSPIRACY,	103
ACCESSARY,	2	CONSTABLES,	106
AFFRAY,	9	CONTAGIOUS DIS-	
ARREST,	13	EASES,	107
ASSAULT & BATTE-		CONVICTION,	112
RY,	21	CORONER,	121
BAIL,	27	DEBTORS, AB-	
BASTARDS,	40	SCONDING,	127
BEEF & PORK,	65	DESSERTERS,	128
BILLETING,	69	DISTRESS,	132
BILLS & NOTES,	70	DOGS,	136
BLASPHEMY,	71	DOWER,	138
BREAD, &c.	71	DRUNKENNESS,	138
BRICKS,	74	DYKES,	143
BRIDEWELL, &c.	75	ESCAPE,	144
BRIDGES,	76	EVIDENCE,	146
BURGLARY,	77	EXAMINATION,	179
BURNING,	80	EXTORTION,	183
CARRIAGES,	80		
CATTLE,	83	FEES,	184
CHEAT,	85	FERRIES,	186
CLERK OF PEACE,	88	FIRES,	189
COALS AND COAL		FIREWORKS,	195
MINES,	90	FISH,	196
COIN,	91	FISHERIES,	206
COMMITMENT,	93	FLOUR,	209
COMMON,	99	FORCIBLE ENTRY,	
COMMON FIELDS,	100,	&c.	213
& 596		FORGERY,	217

TABLE OF THE NAMES OF TITLES.

	Page.		Page.
FREESTONE,	220	OATHS,	340
GAMING,	221	ORPHANS,	341
GAOLS & GAOLERS,	221	PARTITION,	342
GRAIN,	224	PEDLARS,	343
GUAGERS,	228	PERJURY,	344
GUNS FIRING, &c.	230	POOR,	346
HIDES,	231	POUNDS,	382
HIGHWAYS,	232	PUBLIC GROUNDS,	383
HOMICIDE,	241	RAPE,	385
HUE AND CRY,	244	RATES,	386
INCEST,	245	RECOGNISANCE,	401
INDIANS,	246	REGISTRY OF	
INDICTMENT,	247	DEEDS,	405
INFANTS,	249	RESCUE,	406
INFORMATION,	251	REVENUE,	407
INSOLVENT DEBT-		RIDING DISORD-	
ORS,	256	ERLY,	411
JUSTICES OF THE		RIOT,	412
PEACE,	259	RIVERS,	416
LANDLORD AND		ROBBERY,	416
TENANT,	278	SALT,	419
LARCENY,	280	SCHOOLS,	419
LETTERS, THREAT-		SEAMEN, MER-	
ENING,	295	CHANT,	420
LIBEL,	296	SERVANTS,	441
LIGHT HOUSES,	297	SESSIONS,	452
LIME,	297	SEWERS,	454
LORD'S DAY,	298	SHEEP,	456
LUMBER,	307	SHERIFF,	456
LUNATICS,	312	SHIPS,	457
MAIM,	314	SHOOTING AT, &c.	
MALICIOUS INJU-		MALICIOUSLY,	459
RIES,	315	SLANDER,	459
MARRIAGE,	317	SOLDIERS,	460
MILE POSTS,	319	SPIRITUOUS LI-	
MILITIA,	319	QUORS,	461
MISDEMEANOR,	328	SUMMARY TRIALS,	486
NAVY,	329	SUMMONS,	529
NUISANCE,	331	SURETY FOR THE	
		PEACE, &c.	531
		SWEARING,	541
		TAVERNS,	545

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VAGR

TABLE OF THE NAMES OF TITLES.

Page.		Page.		Page.
340	THISTLES, . . .	548	WARRANT, . . .	575
341	TOWN OFFICERS, . . .	549	WEIGHTS & MEASURES, . . .	583
342	TOWNSHIP LINES . . .	552	WELLS & PUMPS, . . .	585
343	TREASON, . . .	553	WIFE, . . .	586
344	TREASURER, . . .	554	WITNESSES, . . .	587
346	COUNTY, . . .	555	WOODS, . . .	589
382	TRESPASSES, . . .	555	WRECK, . . .	589
383	VAGRANTS, &c. . .	567		
385				
386				
401				
405				
406				
407				
411				
412				
416				
416				
419				
419				
420				
441				
452				
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ABSENTEES.

BY the 5 G. 3, C. 5. 1 V. 110. Non resident proprietors of lands are made liable to pay their proportion of all county and town rates, and to perform labour on the highways, in the counties and townships wherein their lands are situated.

Only the first clause of the above statute, which declares the liability of proprietors is now in force; the other clauses, which respect the enforcement of such liability, being virtually repealed by the 33 G. 3, C. 6. 1 V. 317, made in amendment, by which it is provided, that,—“Where no person shall appear to pay such rates, or perform such labour, and no goods of the proprietor can be found within the county, whereon to levy, to satisfy such rates, or the fine for the non-performance of such labour, the collector of rates, or the surveyor of highways, shall report the same to the next Spring Sessions, and such lands, by order of the Sessions, may be let by the Clerk of the Peace for one year, to pay the same with the expenses; and if no person can be found to take them on lease, representation is to be made to the Supreme Court, by the Clerk of the Peace, and that Court, after causing reasonable means to be used to ascertain and notify the proprietor, may direct a sale of a part, or the whole of such lands, to satisfy such rates or fine, and expenses, and a deed of conveyance thereof shall be executed by the Clerk of the Peace. If there be any surplus from such lease or sale, after paying such rates or fine with expenses, the same is to be paid to the proprietor, if known, or otherwise paid into the County treasury, and is not claimed within 3 years, to be at the disposal of the Sessions, for public purposes. Collectors, Surveyors, and Clerks of the Peace, neglecting their duty herein, to forfeit 40 shillings, to be applied for relief of the poor.” *Perpetual.*

It appears desirable for many reasons, that this statute should be universally and strictly carried into effect; particularly, as this would enforce, only a just contribution to public

charges, from such non resident proprietors, and would have a tendency to induce them to take more prompt and effectual means for the sale or improvement of their lands.

It is not thought requisite to insert any forms under this title, as the leases and conveyances will be nearly the same as in ordinary cases, with only the difference, of briefly reciting the liability and neglect of payment,—advertisement to let or sell,—means used to notify the proprietor, and such other requisites as are prescribed in the statute. The enforcement of payment by distress and sale, where goods, &c. of the proprietor are found within the County, will be the same as in other cases of non payment of rates or fines, for which, respectively, see Titles—Rates—and Highways.

ACCESSARY.

- I. OF ACCESSARIES IN GENERAL.
- II. OF ACCESSARIES BEFORE THE FACT.
- III. OF ACCESSARIES AFTER THE FACT AND RECEIVERS.
- IV. HOW ACCESSARIES AND RECEIVERS ARE TO BE PROCEEDED AGAINST.

I. OF ACCESSARIES IN GENERAL.

Accessory, is he that is not the chief actor, but one that is concerned in the felony, by commandment, aid, or receipt.

In high treason, there are no Accessaries, neither *before* nor *after*; for the consenters, aiders, abettors, and knowing receivers and comforters of traitors, are all principals. So in cases that are criminal, but not capital, as in *petit larceny* and *trespass*, there are no Accessaries; for the Accessaries *before*, are in the same degree as principals; and Accessaries *after*, by receiving the offenders cannot be in law under any penalties as Accessaries, unless the Statutes that induce those penalties do expressly extend to receivers or comforters, as some do. 1 *Hale*, 613.

Accessaries
only in Capital
felonies.

Therefore this title of Accessary, refers chiefly to *capital felonies*, whether by the common law, or by statute.

Concerning which L. Coke observes generally, that when an offence is felony, either by the common law, or by statute, all Accessaries, both before and after, are incidentally included. *Co. Inst.* 3—59.

In felonies by
Statute.

And Mr. Hawkins says, I take it to be settled at this day, that in all cases, where a statute makes any offence trea-

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son, or felony, it involves the receiver of the offender in the same guilt with himself, in the same manner as in treason or felony at common law, unless there be an express provision to the contrary. 2 *Haw. c. 29, § 14.*

And although it be generally true, that an Act of Parliament creating a felony, renders consequentially Accessories *before* and *after* within the same penalty, yet the special penning of the Act sometimes varies the case—so that Acts of Parliament may diversify the offences of Accessory or principal, according to the various penning thereof, and so have done in many cases. 1 *Hale, 614, 615.*

The word *command*, is to be considered as comprehending all those who incite, procure, set on, or stir up, any other to do the fact. 2 *East's. P. C. 641.*

A Statute excluding the principals from the benefit of clergy, doth not thereby exclude the Accessories before or after; neither doth a statute excluding the Accessories, thereby exclude the principals. 2 *Haw. c. 33 § 26.*

Benefit of
Clergy.

II. OF ACCESSARIES BEFORE THE FACT.

An Accessary before the fact committed, is he that being absent at the time of the felony committed, doth yet procure, counsel, command, or abet another to commit a felony. For if he be *present*, he is not an Accessary but a principal. 1 *Burn's, 2.*

So if divers come to commit an unlawful act, and be present at the time of the felony committed, though one of them only doth it, they are *all* principals.—*Hale's Sum. 215.* So if one present move the other to strike; or if one present did nothing, but yet came to assist the party if needful; or if one hold the party while the felon strikes him; or if one present deliver his weapon to the other that strikes: for they are *present*, aiding, abetting, or comforting.—*Hale's Sum. 216.* So if several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him, some to commit the fact, and others to watch at proper stations to prevent a surprise, or to favour, if need be, the escape of those, who are more immediately engaged. They are *all*,—provided the fact be committed, in the eye of the law,—*present* at it; and therefore are *all* principals.—*Fost. 350.* But if one came casually, not of the confederacy, though he hindered not the felony, he is neither principal nor Accessary, although he apprehend not the felon; but for his negligence he is punishable by fine and imprisonment. *Hale's Sum. 216.* 2 *Haw. c. 29 § 10.*

As to Accessories some diversities are to be noted : as,

(1.) *When the principal doth not accomplish the fact, altogether in the same sort, as it was beforehand agreed between him and the Accessary ; And therefore, if one command another to lay hold upon a third person, and he lays hold upon him and robs him, the person commanding is not accessory to the robbery.—Dalt. c. 161, p. 369. But if the command had been to beat him, and the party commanded doth kill him, or beat him so that he dieth thereof, the person commanding shall be accessory to the murder ; for it is a hazard in beating a man, that he may die thereof. Id.*

(2.) *He that commands or counsels any evil or unlawful act to be done,* shall be adjudged Accessary to all that shall ensue upon the same evil act, but not to any other distinct thing—As if one command another to steal a horse, and he steals an ox ; or to burn such a one's house, and he burns the house of another ; these are other felonies than he commanded to be done, and therefore he shall not be adjudged Accessary to them. Dalt. c. 161, p. 369.*

(3.) *But if a person commit the same felony, which another did counsel or command to be done, though he doth it at another time, or in another place, or in another sort than was commanded, or counselled, yet here such person commanding or counselling shall be Accessary. As if he doth counsel to kill a man by poison, and he kills him with a dagger ; or to kill him one day, and he kills him on another day ; in these and the like cases he shall be Accessary to the murder. Id.*

(4.) *Those offences which in the construction of law are sudden and unpremeditated, cannot have any Accessories before. As killing a man by misadventure in his own defence, or manslaughter. 1 Hale, 616.*

(5.) *It seems to be generally agreed, that he who barely conceals a felony which he knows to be intended, is guilty only of a misprision of felony, and shall not be adjudged an Accessary. 2 Haw. c. 29, § 23.*

By the 32 G. 2, C. 13. 1 V. 15, the counsellors, aiders and abettors, privy to the offence, of persons who shall, with malice, kill or procure any others to kill, or shall on purpose and of malice, and by lying in wait, cut out or disable the tongue, put out an eye, slit the nose, cut off a nose, or lip, or cut off or disable any limb or member of any person, with intention to kill, or maim, or disfigure, are declared to be

* To incite and solicit another to commit a crime, is a Misdemeanor, although no act be done in consequence of such incitement and solicitation.—*Rex vs. Higgins, 2 East, 5.*

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felons without benefit of clergy. Also the counsellors, aiders, and abettors of persons who shall wilfully and maliciously burn any dwelling house, barn, outhouse, or warehouse of another, or any public building, or any hovel, cock, mow, rick or stack of corn, straw, hay, or wood of another. *Perpetual.*

Also by the same Statute, the aiders and abettors of those who shall commit the following offences, shall suffer the same punishment of death without benefit of clergy as the principal offenders themselves, that is to say,—the aiders and abettors of persons who shall, by night, break open and enter any dwelling house, shop, or warehouse, or any vessel lying so near the land that it be adjudged to be within the County, with an intent to commit any felony ; whether such felonious intent be executed or not ; or who shall rob any dwelling house in the day time, any person being therein, or break any dwelling house, shop or warehouse thereunto belonging, or therewith used, in the day time, and feloniously take away any money or goods of the value of five shillings, therein being, although no person shall be within such dwelling house, shop or warehouse ; or shall rob any other ; or feloniously take away any goods in any dwelling house, the owner or any other person being therein, and put in fear ; or who shall, by night or by day, rob, or by violence take money or goods from any person, putting him in fear, in any highways, or in any streets or lanes of a town ; or who shall feloniously take money or goods from the person of any other, privily without his knowledge.

Also by the 8 G. 3, C. 3. 1 V. 136, the counsellors, aiders, and abettors, privy to the offence, of a woman murdering her husband ; or of a servant murdering his or her master or mistress, shall be adjudged guilty of petit treason ; and suffer death without benefit of clergy. *Perpetual.*

Accessaries before or after the fact of stealing any goods, may be prosecuted and punished by fine and imprisonment, as for a misdemeanor, although the principal felon be not before convicted ; which shall exempt the offender from being punished as Accessary, if the principal shall be after convicted. By 32 G. 2, C. 13. 1 V. 17. *Perpetual.*

III. OF ACCESSARIES AFTER THE FACT, AND RECEIVERS.

Accessary after the fact, is where a person knowing the felony to be committed by another, relieves, comforts, or assists the felon.

It is necessary that the receiver have notice of the felony, either expressed or implied ; and it must be laid in the indictment, that the receiver *knew* that the person received by him had committed the principal felony. 2 Haw. c. 29 § 32.

Aiders and Abettors in certain Offences to be punished the same as principal offenders.

Accessary may be punished as for a Misdemeanor before conviction of the Principal.

This offence, holds only in those felonies, where by the law judgment of death regularly ought to ensue; and therefore ought not in petit larceny. 1 *Hale*, 618. Unless where it is otherwise provided by statute.

It seems if a person do barely receive, comfort, or conceal an offender guilty of *any common trespass or inferior crime of the like nature*, though he knew him to have been guilty, and that there is a warrant out against him, (which by reason of such concealment cannot be executed) yet he is not an Accessary to the offence; but perhaps in such case, he may be indictable for a contempt of the law, in hindering the due course of justice; and if the act of such receiver amount to a rescue, or to the obstructing an officer of justice in the execution of his duty, or the like, he would undoubtedly be indictable for it, as for a misdemeanor. 2 *Haw. c. 29*, § 4.

Several things are to be considered in explication of the words "*relieve, comfort, or assist the felon*":

(1.) Generally any assistance whatsoever given to one known to be a felon, in order to hinder his being apprehended or tried, or suffering the punishment to which he is condemned, is sufficient to make a person Accessary to the felony; as where one assists him with a horse to ride away with, or with money or victuals to support him in his escape. 2 *Haw. c. 29*, § 26.

(2.) But if a man know that a person hath committed a felony, but doth not discover it, this doth not make him an Accessary, but it is a misprision of felony, for which he may be indicted, and upon his conviction fined and imprisoned. 1 *Hale*, 618.

(3.) Also, if a man see another commit a felony, but consents not, nor yet takes care to apprehend him, or to levy hue and cry after him, or upon hue and cry levied doth not pursue him; this is a neglect punishable by fine and imprisonment, but it doth not make him an Accessary. *Id.*

(4.) In like manner, if one commit a felony and come to a person's house, before he be arrested; and such person suffer him to escape without arrest, knowing him to have committed a felony, this doth not make him an Accessary; but if he take money of the felon to suffer him to escape, or if he shut the fore door of his house, whereby the pursuers are deceived, and the felon hath opportunity to escape, he makes himself an Accessary. 1 *Hale*, 619.

(5.) Whosoever rescues a felon from an arrest for the felony, or voluntarily suffers him to escape, is an Accessary to the felony. 2 *Haw. c. 29* § 27.

(6.) But if a felon be in prison, he that relieves him

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with necessary meat, drink or clothes, for the sustentation of life, is not Accessary. 1 *Hale*, 620. So if he be bailed out, it is lawful to relieve and maintain him. *Id.*

(7.) But if a felon be in gaol, for a man to convey instruments to him to break prison to make an escape, or to bribe the gaoler to let him escape, makes the party an Accessary. 1 *Hale*, 621.

(8.) The sending a letter in favour of a felon, or advising to labour witnesses not to appear, makes no Accessary, but it is a high contempt. *Hale's Sum.* 219.

(9.) A man may be Accessary to an Accessary, by the receiving of him, knowing him to be an Accessary to felony. 1 *Hale*, 622.

(10.) If a man have goods stolen, and he receive his goods again, simply without any contract to favour the felon in his prosecution, this is lawful; but if he receive them upon agreement not to prosecute, or to prosecute faintly, this is theftbote, punishable by imprisonment and fine; but yet it makes him not an Accessary; but if he takes money of him to favour him, whereby he escapes, this makes him an Accessary. 1 *Hale*, 619.

(11.) It seems agreed that the law hath such a regard to that duty, love and tenderness, which a wife owes to her husband, as not to make her an Accessary to felony, by any receipt given to her husband. Yet if she be any way guilty of procuring her husband to commit it, it seems to make her an Accessary before the fact, in the same manner as if she had been sole. But no other relation besides that of a wife to her husband, will exempt the receiver of a felon from being an Accessary to the felony; from whence it follows, that if a master receive a servant, or a servant a master, or a brother a brother, or even a husband a wife, they are Accessaries in the same manner as if they had been mere strangers to one another. 2 *Haw.* c. 29, § 34.

(12.) But if the wife alone, the husband being ignorant of it, do receive any other person, being a felon, the wife is Accessary, and not the husband. 1 *Hale*, 621.

(13.) But if the husband and wife both receive a felon, knowingly, it shall be adjudged only the act of the husband, and the wife shall be acquitted. *Id.*

By the 32 G. 2, C. 13. 1 V. 17. "Any person who shall buy or receive any goods that shall be stolen, knowing the same to be stolen, shall be deemed an Accessary to the felony after the fact." *Perpetual.* This however does not extend to petit larcenies, as to which offence, there can be no Accessaries. See 1 *Hale*, 530—1 *Burn's*, 7.

Receiver of
Stolen Goods.

By the same Statute last mentioned,—“persons buying or receiving stolen goods, knowing the same to be stolen; or who shall be Accessary to such felony before or after the fact, may be prosecuted and punished as for a misdemeanor; although the principal felon be not before convicted of the felony; which shall exempt the offender from being punished as Accessary, if the principal shall be after convicted.” *Perpetual.*

NOTE.—The receivers of money or bank notes stolen, are not to be considered within the above statute, in which only the word “goods” is used. See 1 Burn’s, 16, and the cases there cited.

IV. HOW ACCESSARIES AND RECEIVERS ARE TO BE PROCEEDED AGAINST.

How far bail-
able.

By 3 Ed. I. C. 15, Those who are accused of the receipt of felons, or of commandment or force, or of aid in felony done, shall be bailable, but this seems to be only where it stands indifferent whether the party be guilty or innocent; for if there be strong presumptions of guilt, it seemeth that he is not bailable. 2 Haw. c. 15, § 53.

Where to be
tried.

“Where a person is feloniously stricken or poisoned in one county, and dies thereof in another county, the Accessary may be indicted and tried in the county where the death shall happen. Also, where a murder or felony is committed in one county, and the person is Accessary in another County, the Accessary may be indicted and tried in the county where he was Accessary.” By 8 G. 3, C. 3, 1 V. 135. (from 2 & 3 Edw. VI. C. 24.) *Perpetual.*

Notwithstanding the allowance of clergy and burning in the hand of any principal offender, the Accessaries to such offender shall be arraigned and tried in the same manner as if such clergy had not been allowed. By 32 G. 2, C. 13, § 26, (from 1 Ann, Stat. 2, C. 9.) *Perpetual.*

It is now agreed that the principal though not convicted or pardoned, may be examined as a witness against the receiver. 2 East’s P. C. 782, 783. 2 Leach, 418. 1 Burn’s, 22.

For *Précédents* and other matters relating to the proceedings against Accessaries, see respectively, *Titles*—Warrant; Arrest; Examination; Bail; Commitment.

ACTIONS, see JUSTICES OF THE PEACE.

ADULTERY, see MARRIAGE.

AFFRAY.

- I. WHAT IS AN AFFRAY.
- II. HOW FAR IT MAY BE SUPPRESSED BY A PRIVATE PERSON.
- III. HOW FAR BY A CONSTABLE.
- IV. HOW FAR BY A JUSTICE OF THE PEACE.
- V. PUNISHMENT OF AN AFFRAY.

I. WHAT IS AN AFFRAY.

An Affray is a public Offence to the terror of the King's subjects ; so called, because it affrights and makes men afraid.
3 Co. Inst. 158.

There may be an *Assault* which will not amount to an *Affray*, as where it happens in a private place, out of the hearing or seeing of any except the parties concerned ; in which case it cannot be said to be to the terror of the people. Also it is said, that no quarrelsome or threatening words shall amount to an affray ; and that no one can justify laying his hands on those who shall barely quarrel with angry words without coming to blows ; yet it seems that the constable may, at the request of the party threatened, carry the person who threatens to beat him before a Justice, in order to find sureties. 1 *Haw.* c. 63, § 1 & 2. 1 *Burns*, 25.

It is a very high offence to challenge another either by word or letter to fight a duel ; or to be the messenger of such a challenge ; or even barely to endeavour to provoke another to send a challenge, or to fight ; as by dispersing letters to that purpose full of reflections, and insinuating a desire to fight. 1 *Burns*, 25.

In some cases there may be an affray where there is no actual violence ; as where a Man arms himself with dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people : which is said to have been always an offence at the Common law, and is strictly prohibited by Statute ; for by 2 Ed. III, C. 3, it is enacted " that no man of what condition soever, except the King's servants, in his presence, and his Ministers in executing their office, and such as be in their company, assisting them, and also upon a cry made for arms to keep the peace, shall come before the King's Justices, or other of the King's Ministers doing their office, with force and arms ; nor bring any force in affray of peace ; nor go, nor ride armed by night or day, in fairs or markets, or in the presence

Words do not amount to an Affray.

Challenge to fight.

Affray where no actual violence.

of the King's Justices, or other Ministers, or elsewhere ; upon pain to forfeit their armour to the King, and their bodies to prison at the King's pleasure. And the King's Justices, in their presence, Sheriffs, and other Ministers in their bailiwicks, Lords of franchises and their bailiffs in the same, and Mayors and bailiffs of cities and boroughs within the same, and borough-holders, constables, and Wardens of the peace, within their Wards, shall have power to execute this Act *Id.* 25.

Wearing of
Arms.

It is holden upon the words of exception in the above Statute, that no person is within the intention of this Statute, who arms himself to suppress dangerous rioters, rebels, or enemies, and endeavors to suppress or resist such disturbers of the peace and quiet of the realm. Also, that no wearing of Arms is within the meaning of this Statute, unless it be accompanied with such circumstances as are apt to terrify the people ; consequently, that persons of quality are in no danger of offending against this Statute by wearing common weapons, or having their usual number of attendants with them for their ornament or defence. *Id.* 26.

A man cannot excuse the wearing of armour in public, by alleging that such a one threatened him, and that he wears it for the safety of his person from his assault : but no one shall incur the penalty of the said Statute, for assembling his neighbours and friends in his own house, against those who threaten to do him any violence therein ; because a man's house is as his castle. *Id.* 26.

It is holden that any Justice of the peace, or other person who is empowered to execute this Statute, may proceed thereon *ex officio* ; and if he find any person in Arms contrary to the form of the Statute, he may seize the Arms, and commit the offender to prison, and that he ought also to make a record of the whole proceeding, and certify the same into the Exchequer. *Id.* 26.

II. OF SUPPRESSING IT BY A PRIVATE PERSON.

It seems agreed, that any one who sees others fighting, may lawfully part them ; and also stay them till the heat be over, and then deliver them to the Constable, to be carried before a Justice, to find sureties for the peace. 1 *Haw.* c. 6, § 11. 1 *Burns*, 26.

And the law doth encourage him hereunto ; for if he receive any harm by the Affrayers, he shall have his remedy by law against them, and if the Affrayers receive hurt by endeavouring only to part them, the standers-by may justify the same ; and the Affrayers have no remedy by law. But if either

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Id. 27.

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of the parties be slain or wounded, or so stricken that he falls down for dead, in that case the standers-by ought to apprehend the party so slaying, wounding, or striking; or to endeavour the same by hue and cry; or else for his escape they shall be fined and imprisoned. 3 *Inst.* 158. 1 *Burn's*, 26.

III. HOW FAR BY A CONSTABLE.

A CONSTABLE is not only empowered to part an Affray which happens in his presence, but is bound to use his best endeavours to this purpose; and also to demand the assistance of others, which if they refuse to give him, they are punishable by fine and imprisonment. And if he see persons either actually engaged in an Affray, or upon the very point of entering upon one; as where a person shall threaten to kill, wound, or beat another, he may either carry the offender before a Justice to find sureties for the peace; or he may imprison him of his own authority for a reasonable time, until the heat shall be over, and also afterwards detain him till he find such surety by obligation: But it seems, that he has no power to imprison such an offender in any other manner, or for any other purpose: And it is said, that he ought not to lay hands on those who barely contend with hot words, without any threats of personal hurt, but can only command them, under pain of imprisonment, to avoid fighting. 1 *Burns*, 27.

Also if an assault be made upon him, he may not only defend himself, but also imprison the offender in the same manner as if he were no way a party. And if an Affray be in a house, the Constable may break open the doors to preserve the peace; and if Affrayers fly to a house, and he follow with fresh suit, he may break open the doors to take them. But it is said, that a Constable hath no power to arrest a man for an Affray done out of his own view, without a warrant from a Justice, unless a felony were done, or likely to be done. *Id.* 27.

IV. HOW FAR BY A JUSTICE OF THE PEACE.

THERE is no doubt but that a Justice of the peace may and must do all such things to the aforesaid purpose, which a private man or constable is either enabled or required by the law to do: But it is said that he cannot without a warrant authorize the arrest of any person for an Affray out of his own view; yet it seems clear, that in such case, he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace. And a Justice has a

greater power over one who has dangerously wounded another in an affray, than either a private person or a constable; for there does not seem to be any good authority, that these have any power at all to take sureties of such an offender; but it seems certain, that a Justice has a discretionary power either to commit him, or to bail him, till the year and day be past. But it is said, that he ought to be very cautious how he takes bail, if the wound be dangerous; for that if the party die, and the offender appear not, he is in danger of being severely fined, if he shall appear upon the whole circumstances of the case to have been too favourable. 1 *Burn's*, 27, 28.

V. PUNISHMENT OF AN AFFRAY.

ALL Affrays in general are punishable by fine and imprisonment. 1 *Burn's*, 28.

WARRANT TO APPREHEND AFFRAYERS.

County } To each and every of the Constables
of } of the township of _____ in the
said County; greeting:

WHEREAS A. I. of the township of _____ in the said County, yeoman, hath this day made oath before me, A— M—, Esquire, one of His Majesty's Justices of the Peace for the said County, that on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____ A. O. of the township of _____, in the said County, yeoman, and B. O. of the township of _____, in the said County, yeoman, at the said township of _____, in the County aforesaid, in a tumultuous manner, made an Affray, wherein the person of the said A. I. was beaten and abused by them the said A. O. and B. O. without any lawful or sufficient provocation given to them, or to either of them, by him the said A. I. These are therefore to command you forthwith to apprehend the said A. O. and B. O. and bring them before me, or some other of his said Majesty's Justices of the Peace for the said County, to answer the premises; and to find sureties as well for their personal appearance at the next General Sessions of the Peace to be holden for the said County, then and there to answer to an indictment to be preferred against them by the said A. I. for the said offence, as also for their keeping the peace in the mean time, towards his said Majesty and all his liege people, and especially towards him the said A. I. Hereof fail not, as you will answer the con-

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in the said County, the _____ day of _____, in the year _____.
A— M—, J. P.



APPEALS, see respectively, Titles POOR, and RATES.

APPRENTICES, see SERVANTS.



ARREST.

THIS title is to be understood of Arrests in Criminal cases only, and not in Civil cases.

In Law, an Arrest doth signify the restraint of a man's person, depriving him of his own will and liberty, and binding him to become obedient to the will of the law; and it may be called the beginning of imprisonment. *Lamb* 95. 1 *Burn's*, 169.

Concerning which will be shewn,

- I. WHO MAY OR MAY NOT BE ARRESTED.
- II. FOR WHAT CAUSES OF SUSPICION AN ARREST MAY BE.
- III. BY WHOM AN ARREST SHALL BE MADE.
- IV. THE MANNER OF AN ARREST.
- V. WHAT IS TO BE DONE AFTER THE ARREST.

I. WHO MAY OR MAY NOT BE ARRESTED.

GENERALLY a Member of Parliament shall have the privilege of Parliament for himself and his servants, to be freed from Arrests: but for treason, felony, and breach of the peace, there can be no privilege. 1 *Black Com.* 145. 1 *Burn's*, 170.

Bodies corporate, acting in a way that would render an individual liable to Arrest, cease to retain of course their corporate character, and become individually responsible.— 1 *Burn's*, 170.

In the case of *Rex vs Woodham*, 2 *Sh.* 828, upon a motion for an information against the defendant, who was a Justice of the Peace, it was holden, that a person in execution in the King's Bench prison may be there charged criminally by the warrant of a Justice of the Peace; but that no such Justice can take a prisoner of this Court out of the custody of the Court, and send him to the County gaol. *Id.* 170.

In Church
Yards.

By Statutes 50 Ed. 3. c. 5, and 1 Rich. 2, c. 15, None shall arrest priests or their clerks, or other persons of holy church, whilst they attend to divine service, in churches, church-yards, or other places dedicated to God; on pain of imprisonment and ransom at the King's will; and he shall also make satisfaction to the parties arrested. *Id.* 170.

On Sundays.

Also by Stat. 29. C. 2. c. 7, § 6, "A warrant executed against any person whatsoever, on the Lord's day, is void; and the persons serving the same, shall answer damages, as if they had done the same without warrant; except in cases of treason, felony, or breach of the peace. *Id.* 170.

II. FOR WHAT CAUSES OF SUSPICION AN ARREST MAY BE.

Causes of
Suspicion.

By the Statute of 34 Ed. 3, c. 1. Power is given to the Justices of the peace to arrest all those, whom they find by indictment, or by suspicion, and to put them in prison.

The causes of suspicion which are generally agreed to justify the arrest of an innocent person for felony, are these that follow:

(1.) The common fame of the country: but it seems that it ought to appear upon evidence, in an action brought for such arrest, that such fame had some probable ground.

(2.) Being found in such circumstances, as induce a strong presumption of guilt; as coming out of a house wherein murder has been committed, with a bloody knife in one's hand; or being found in possession of any part of goods stolen, without being able to give a probable account of coming honestly by them.

(3.) The behaving one's self in such a manner, as betrays a consciousness of guilt; as where a man accused of felony, on hearing that a warrant is taken out against him, doth abscond. 1 *Burn's*, 170.

(4.) The being found in company with one known to be an offender, at the time of the offence; or generally at other times, keeping company with persons of scandalous reputation. *Id.*

(5.) The living an idle, vagrant, and disorderly life, without having any visible means to support it—2 Haw. c. 12, §10. 11. A woman walking up and down the streets to pick up men, a night-walker, may be apprehended. *Per Lawrence, J. Lawrence vs. Hedger, 3 Taunt.* 15.

(6.) The being pursued by hue and cry. For if a felony is done, and one is pursued upon hue and cry, that is not of ill fame, suspicious, unknown, nor indicted, he may be attached and imprisoned by the law of the land. 1 *Burn's*, 171.

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(7.) But generally no such cause of suspicion as any of the above mentioned, will justify an Arrest, where in truth no such crime hath been committed ; unless it be in the case of hue and cry. *Id.* 171.

(8.) In the case of Samuel *vs* Payne & others—*Doug.* By a Peace Officer. 359—it was determined that a peace officer may justify an Arrest on a reasonable charge of felony, without a warrant, although it should afterwards appear that the man is innocent, or even that no felony was in fact committed ; but that a private individual in such a case cannot.

If a peace officer, *of his own head*, takes a person into custody *on suspicion*, he must prove that there was such a crime committed ; but if he receives a person into custody on a charge preferred by another of felony, or breach of the peace, there he is to be considered a mere conduit ; and if no felony or breach of the peace was committed, *the person who preferred the charge alone is answerable.* *Per L. Ellenb. Hobbs vs. Branscomb & others. Sitings after T. T. 53 G. 3. 3 Camp. 420. 1 Burn's 172.*

III. BY WHOM THE ARREST SHALL BE MADE.

If a Justice see a felony, or other breach of the peace, committed in his presence, he may in his own person apprehend the offender. And he may also by word of mouth, command any one to arrest another who shall be guilty of any felony, or actual breach of the peace in his presence, and such command is a good warrant without writing. 2 *Hale*, 86. 1 *Burn's*, 173.

And all persons who are present when a felony is committed, or a dangerous wound given, are bound to apprehend the offender, on pain of being fined and imprisoned for their neglect ; unless they were under age at the time.

Also, every private person is bound to assist an officer demanding his help, for the taking of a felon, or the suppressing of an Affray. 1 *Burn's*, 173.

A Constable may *ex officio* arrest a breaker of the peace in his view, and keep him in his house, or in the stocks, till he can bring him before a Justice.

Or any person whatsoever, if an affray be made to the breach of the King's peace, may, without any warrant from a Magistrate, restrain any of the offenders to the end the King's peace may be kept ; but after the affray is ended they cannot be arrested without an express warrant. *Id.* 173.

All peace officers and also private persons, may arrest any man about to commit a felony or treason, or any act which

would manifestly endanger another's life, and detain him until the intent be presumed to have ceased. 2 *Haw. c. 12, § 19.*

So much concerning an Arrest without a warrant : next follows Arresting with such warrant.

Arrest by
Warrant.

The Warrant is ordinarily directed to the Sheriff or Constable, and they are indictable and subject thereupon to a fine and imprisonment if they neglect or refuse it.

The Sheriff may command any of his sworn and known officers to execute it, without writing any precept. 1 *Burn's*, 173.

But every other person to whom it is directed, must personally execute it ; yet it seems, that any one may lawfully assist him. *Id.* 174.

If a Warrant be generally directed to all Constables, no one can execute it out of his own precinct ; for in such case it shall be taken respectively to each of them within their several districts, and not to one of them to execute it within the district of another : but if it be directed to a particular Constable, *by name*, he may execute it any where within the Jurisdiction of the Justice, but is not compellable to execute it out of his own Constablewick. *Id.*

The Justice may direct the Warrant to a private person if he please, and it is good ; but such person is not compellable to execute it, unless he be a proper officer. *Id.*

But by the Justice's oath of office, the Warrant ought not to be directed to the party, but to some indifferent person to execute it.

If a Warrant be directed to two or more jointly, yet any one of them alone may execute it. *Id.* 174.

IV. THE MANNER OF AN ARREST.

THE officer to whom a Warrant is directed and delivered, ought with all speed and secrecy to find out the party ; and then to execute the warrant. 1 *Burn's*, 174.

It is certainly an offence of a very high nature, to oppose one who lawfully endeavours to arrest another for treason or felony ; and it seems that a person, who so opposes an arrest for treason, whereof he knows the party to have been guilty, is thereby guilty of the treason ; and that he who so opposes an arrest for felony, is an accessory to the felony. *Id.*

Arrest by
Night.

In another
County.

An Arrest in the night is good both at the suit of the King and of the subject ; else the party may escape. *Id.*

By the 54 G. 3, c. 15. 2 V. 122, "A warrant issued by a Justice in one county, may on proof on oath being made of his hand writing, be endorsed by a Justice in another county,

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into which the offender has escaped ; and the Constables, and all others to whom such warrant was originally directed, may arrest the offender in such latter county where the warrant was indorsed, and carry him before the Justice who indorsed it, or some other Justice in such latter county, if the offence be bailable, to find bail ; or else shall carry him back again before a Justice in the county from whence the warrant did first issue." *Perpetual.*

In the case of *Mayhew vs. Parker*, 8 T. R. 110, it was determined, that a warrant to arrest the party, to the end that he may become bound to appear at the *next Sessions*, &c., means the *next Sessions after the Arrest*, and not after the date of the warrant ; therefore the officer executing it may justify an arrest, after the Sessions next ensuing the date of the warrant. 1 *Burn's*, 174.

Any Justice or the Sheriff, may take of the county any number that he shall think meet, to pursue, arrest and imprison traitors, murderers, robbers and other felons ; or such as do break, or go about to break or disturb the King's peace ; and every person above the age of fifteen years, and able to travel, being required, ought to assist, and aid them, on pain of fine and imprisonment. But it is not justifiable for a Justice, Sheriff, or other Officer, to assemble the *posse comitatus*, or raise a power or assembly of people upon their own heads, without just cause. *Id.*

As to the case of breaking open doors, in order to apprehend offenders, it is to be observed, that the law doth never allow of such extremities but in cases of necessity ; and therefore no one can justify breaking open another's door to make an Arrest, unless he first signify to those in the house, the cause of his coming, and request them to give him admittance. *Id.* 175.

No precise form of words is required in a case of this kind. It is sufficient that the party hath notice, that the Officer cometh not as a mere trespasser, but claiming to act under a proper authority, provided that the Officer has a legal warrant. *Id.*

But where a person authorised to arrest another, who is sheltered in a house, is denied quietly to enter into it, in order to take him, it seems generally to be agreed, that he may justify breaking open the doors, in the following instances :—

(1.) Upon a *capias* grounded on an indictment for any crime whatsoever ; or upon a *capias* from the Chancery or King's Bench, to compel a man to find sureties for the peace or good behaviour ; or even upon a warrant from a Justice of the peace, for such purpose. *Id.*

(2.) When one known to have committed a treason or felony, or to have given another a dangerous wound, is pursued

Taking the power of the County.

Breaking open doors.

either with or without a warrant, by a constable or private person ; but where one lies under a probable suspicion only, and is not indicted, it seems the better opinion at this day, that no one can justify the breaking open doors in order to apprehend him. *Id.*

But upon a Warrant for probable cause of suspicion of felony, the person to whom such Warrant is directed, may break open doors to take the person suspected, if upon demand he will not surrender himself ; as well as if there had been an express and positive charge against him ; and so (says Mr. Hawkins,) hath the common practice obtained, notwithstanding the contrary opinion of Lord Coke ; for in such case, the process is for the King, and therefore a *non omittas* is implied. *Id.*

And as he may break open such person's own house, so much more may he break open the house of another to take him ; for so the Sheriff may do upon civil process : but then he must at his peril see that the felon be there ; for if the felon be not there, he is a trespasser to the stranger whose house it is. *Id.*

It is but a thing permitted to private persons to arrest for suspicion ; and they are not punishable if they omit it ; but in case of a constable, he is punishable if he omit it upon complaint. *Id.* 176.

And in general, an officer upon any warrant from a Justice, either for the peace or good behaviour, or in any case where the King is party, may by force break open a man's house, to arrest the offender. *Id.*

(3.) On a warrant to search for stolen goods, the doors may be broke open, if the goods are there ; and if they are not there, the constable seems indemnified, but he that made the suggestion is punishable. 2 *Hale*, 151. 1 *Burn's*, 176.

(4.) Also doors may be broke open where forcible entry or detainer is found by inquisition before Justices of the peace, or appears on their view. 1 *Burn's*, 176.

(5.) Also, on the warrant of a Justice of the peace, for the levying of a forfeiture in execution of a judgment, or conviction for it, grounded on any Statute, which gives the whole or any part of such forfeiture to the King. *Id.*

(6.) Where an affray is made in a house, in the view or hearing of the constable, he may break open the doors to take them. *Id.*

(7.) If there be disorderly drinking or noise in a house, at an unseasonable time of night, especially in inns, taverns, or alehouses, the constable or his watch demanding entrance, and being refused, may break open the doors to see and suppress the disorder. *Id.*

(8.) Wherever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in an house, the doors may be broke open. *Id.*

(9.) But upon a general warrant, without expressing any felony, or treason, or surety of the peace, the officer cannot break open a door. *Id.*

(10.) In a civil suit, the officer cannot justify the breaking open an outward door or window, in order to execute process. If he doth he is a trespasser. But if he finds the outward door open, and enters that way ; or if the door be opened to him from within, and he enters, he may break open inward doors, if he finds that necessary in order to execute his process. For a man's house is his castle, for safety and repose to himself and his family ; but if a stranger, who is not of the family, upon pursuit takes refuge in the house of another, this rule doth not extend to *him*, it is not *his* castle, he cannot claim the benefit of sanctuary therein. And it is always to be remembered, that this rule must be confined to the case of Arrest upon civil suits only. For where a felony hath been committed, or a dangerous wound given ; or even where a Minister of Justice comes armed with process founded on a breach of the peace, the party's own house is no sanctuary for him. *Id.*

(11.) Finally, in all these cases, if an officer to serve any Warrant, enter into a house, the doors being open, and then the doors are locked upon him, he may break them open, in order to regain his liberty. *Id.* 177.

If there be a Warrant against a person for a trespass or breach of the peace, and he fly and will not yield to the Arrest ; or being taken, make his escape ; if the officer kill him it is murder. *Id.*

But if such person, either upon the attempt to Arrest, or after the Arrest, assault the officer, to the intent to make his escape from him ; and the officer standing upon his guard, kill him, this is no felony, for he is not bound to go back to the wall, as in common cases of *se defendendo*, for the law is his protection. *Id.*

A person sworn and commonly known and acting within his own precinct, need not shew his warrant ; but he ought to acquaint the party with the substance of it. *Id.* 178.

An officer gives sufficient notice what he is, when he saith to the party, *I arrest you in the King's name*, and in such case the party at his peril ought to obey him, though he knows him not to be an officer ; and if he have no lawful warrant, the party grieved may have his action of false imprisonment. *Id.*

But if he act out of his precinct, or be not sworn and commonly known, he must shew his warrant if demanded.

Killing in the arrest or pursuit.

Shewing the Warrant.

Otherwise the party may make resistance, and needs not to obey it. In no case, however, is a constable required to part with the warrant out of his own possession ; for that is his justification. *Id.*

But if the constable have no warrant, but doth it by virtue of his office as a constable, it is sufficient to notify that he is constable ; or, that he arrests in the King's name. *Id.*

No Arrest by words only.

Bare words will not make an Arrest without laying hold on the person, or otherwise confining him. But if an officer come into a room, and tell the party he arrests him, and lock the door, this is an Arrest ; for he is in custody of the officer.—*Id.* 179.

Retaking after Arrest.

It hath been holden, that if a constable after he hath arrested the party by force of a warrant, suffer him to go at large, upon his promise to come again and find sureties, he cannot afterwards arrest him by force of the same warrant : however, if the party return, and put himself again under the custody of the constable, it seems it may be probably argued, that the constable may lawfully detain him, and bring him before the Justice in pursuance of such warrant. *Id.*

But if the party arrested do escape, the officer upon fresh suit, may take him again, and again, so often as he escapes ; although he were out of view, or that he shall fly into another town or county. *Id.*

V. WHAT IS TO BE DONE AFTER THE ARREST.

By a private person.

WHEN a private person hath arrested a felon, or one suspected of felony, he should with as much speed as conveniently he can, carry him immediately to a Justice of the peace, or deliver him to a constable, who may either carry him to gaol, or to a Justice. And if a constable hath arrested affrayers, or persons drinking in an ale-house *disorderly*, at an unseasonable time of night, he may imprison them till the heat of their passion or intemperance is over, though he deliver them afterwards ; or till he can bring them before a Justice. 1 *Burn's*, 179.

By an Officer by Warrant.

If the Arrest be by virtue of a warrant, and the direction of the warrant be to bring the party before the Justice, who granted it, specially ; then the officer is bound to bring him before the same Justice ; but if the warrant be to bring him before any Justice of the County, then it is in the election of the officer to bring him before what Justice he thinks fit ; and not in the election of the prisoner.—*Id.* But if the time be unseasonable, as in or near the night, whereby he cannot attend the Justice ; or if there be danger of a present rescue, or if the party be sick, he may secure him in the stocks, or in an house

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till the next day, or such time as it may be reasonable to bring him. 1 *Burn's*, 180.

And when he hath brought him to the Justice, yet he is in law still in his custody, till the Justice discharge, or bail, or commit him. *Id.*

But the constable is not obliged to return the warrant itself, but may keep it for his own justification, in case he should be questioned for what he had done, but only to return what he has done upon it. *Id.*

ASSAULT AND BATTERY.

I. WHAT IS AN ASSAULT.

II. WHAT IS A BATTERY.

III. IN WHAT CASES THEY MAY BE JUSTIFIED.

IV. HOW PUNISHED.

I. WHAT IS AN ASSAULT.

AN Assault is an attempt or offer with force and violence to do a bodily hurt to another, as by striking at him with or without a weapon, though the party striking misses his aim ; so drawing a sword, throwing a bottle or glass with intent to wound or strike ; presenting a gun at a person within the distance to which the gun will carry ; or pointing a pitchfork at a person standing within reach ; holding up one's fist at them in a threatening or insulting manner ; or with such other circumstances as denote at the time an intention (coupled with a present ability,) of using actual violence against his person. No words whatsoever can amount to an Assault. 1 *Haw. c. 62, § 1.* 1 *Burn's*, 181.

II. WHAT IS A BATTERY.

A BATTERY in the legal acceptation of the term, means not merely to strike forcibly with the hand, or a stick, or the like ; but includes every touching (however trifling,) of another's person in an angry or revengeful, rude, or insolent manner ; as thrusting or pushing him in anger, holding him by the arm, sitting in his face, jostling him out of the way, pushing another man against him, throwing a squib at him, striking a horse upon which he is riding, whereby he is thrown, or the like. 1 *Burn's*, 181. *Arch. C. P.* 241.

III. IN WHAT CASES THEY MAY BE JUSTIFIED.

By Misadventure.

It is a good defence, to prove that the alleged Battery happened by misadventure ; as where a horse ran away with his rider, and ran against a man ; also where a soldier in his ranks, discharged his gun, and a man unexpectedly passed before him at the time, and was hurt by it—so it is a good defence that the alleged Battery was merely an amicable contest : as that he wrestled with the prosecutor for a wager ; or that it happened by accident, whilst the defendant was engaged in some sport or game which was neither unlawful nor dangerous.

By Parent or Master, &c.

Also, the correction of a child by his parent, of a servant or scholar by his master, and the punishment of a criminal by the proper officer, may be justified ; provided the correction be moderate in the manner, the instrument, and the quantity of it ; or that the criminal be punished in the manner appointed by law. Also, if a man force a sword from one who offers to kill another ; or gently lay his hands on another, and thereby stay him from inciting a dog against a third person ; or if a man fight with or beat one who attempts to kill any stranger ; or if he even threaten to kill one who puts him in fear of death, in such a place where he cannot safely fly from him ; or if one imprison those whom he sees fighting, till the heat is over ; in all these cases the party may justify the Assault and Battery. *Arch. C. P. 242. 1 Burn's, 182.*

Previous Assault.

It is a justification even of a wounding or maim, to prove that the prosecutor assaulted or beat the defendant first, and that the defendant committed the alleged Battery merely in his own defence ; if he prove an Assault merely, as for instance, that the prosecutor lifted up his staff and offered to strike him ; it is sufficient to justify the defendant's striking him, for he need not in such a case stay till the other has actually struck him. So a husband may justify a Battery in defence of his wife, a wife in defence of her husband, a parent in defence of his child, a child in defence of his parent, a master in defence of his servant, and a servant in defence of his master. But in all these cases, the Battery must be such only as was necessary to the defence of the party or his relation ; for if it were excessive, if it were greater than was necessary for mere defence, the prior Assault will be no justification. It is not every trifling Assault that will justify a grievous and immediate maim ; such as cutting off a leg or hand, or biting off a joint of a man's finger, unless it happened accidentally, without any cruel or malignant intention, or after the blood was heated in the scuffle ; but it must appear that the Assault was in some degree proportionable to the maim. Also, it will

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be a sufficient answer to this defence, to prove that the first Assault was justifiable. *Arch. C. P. 242. 1 Burn's, 182, 183.*

It is said that a servant may not justify beating another in defence of his master's son; though he were commanded to do so by the master; neither can a tenant justify beating another, in defence of his landlord. *1 Burn's, 182.*

Servant or
Tenant.

A man may justify a Battery committed in defence of his possession; as for instance to remove the prosecutor out of his close or house, or to prevent him from entering it; to restrain him from taking or destroying his goods, &c.; from taking or rescuing cattle, &c. in his custody upon a distress; from disturbing him of his highway; or from turning an ancient water-course from his mill, or the like. In the case of a trespass in law merely, without actual force, the owner of the close, house, &c. must first request the trespasser to depart, before he can justify laying his hand on him for the purpose of removing him; and even if he refuse, he can only justify so much force as is necessary to remove him. But if the trespasser use force, then the owner may oppose force to force; and in such a case if he be assaulted or beaten, he may justify even a wounding or maim in self defence, as above mentioned. In answer, however, to a justification in defence of his possession, the other party may prove that the Battery was excessive; or may justify the alleged trespass on the defendant's possession, by proving that he had a right of way over the close, or the like. *Arch. C. P. 243. 1 Burn's, 182.*

Possession.

It is a good defence that the defendant as an officer of justice arrested the prosecutor by virtue of a certain writ or process, which is the Battery complained of. A sheriff's officer, however, can only justify laying his hand upon a man in order to arrest him upon a writ or process; unless he resist or an attempt be made to rescue him; and even then he can justify no greater degree of force than was necessary, in order to secure his prisoner. And the same as to officers of justice, and persons acting in their aid arresting on suspicion of felony without warrant. So a man may justify laying his hand upon another to prevent him from fighting, or committing a breach of the peace, or to prevent him from rescuing goods taken in execution, or the like—yet even in these cases he must not use more force than is requisite to restrain the other party; otherwise he cannot avail himself of the threatened breach of the peace, &c. as a justification. *Arch. C. P. 243.*

IV. HOW PUNISHED.

THERE is no doubt but that the wrong-doer is subject both to an action at the suit of the party wherein he shall ren-

der damages, and also to an indictment, wherein he shall be fined, according to the heinousness of the offence. And the Court in which the action is brought, will not compel the party injured to make his election to pursue either the one or the other. *1 Burn's*, 183-4.

It is an aggravation of the offence, on account of the person on whom, or the place where the same is committed : As where a man assaults or threatens another for suing him ; a counsel or attorney for being employed against him ; a juror for his verdict ; or a gaoler, constable, or other ministerial officer for keeping him in custody and properly executing his duty. *Id.* 184.

The punishment usually inflicted upon persons convicted of Assaults and Batteries, is, fine and imprisonment, and the finding of sureties to keep the peace. *Id.*

In cases where the offence more immediately affects the individual, the defendant is sometimes permitted by the Court, even after conviction, to speak with the prosecutor before any judgment is pronounced ; and if the prosecutor declares himself satisfied, a trivial punishment is inflicted. *Id.* 185.

By the 32 G. 2, C. 13. 1 V. 16, "Persons assaulting with intent to commit an unnatural crime, or to commit a rape, may be set in the pillory, and be fined and imprisoned, and by 56 G. 3 c. 6 2 V. 201, instead of such punishment, they may be put and kept at hard labour, for a limited time in a Bridewell, or upon highways or public works." *Perpetual*.

AFFIDAVIT OF AN ASSAULT, &c.

The information and complaint of A. County } I. of — in the said County of — of —, yeoman, made on Oath this — day of — in the year of our Lord one thousand eight hundred and thirty — before me A — M —, Esquire, one of His Majesty's Justices of the Peace in and for the said County.

The said deponent saith, that on the — day of —, in the year aforesaid, at — in the County aforesaid, A — O — of — in the said County, butcher, violently assaulted him this deponent, and did — And hereupon the said deponent prayeth a warrant of me the said Justice, to issue against the said A — O —, to compel him to answer unto the said complaint.

A — I —.

Sworn before me,

A — M —, J. P.

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ASSAULT AND BATTERY.

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WARRANT FOR AN ASSAULT, &c.

County of } To each and every of the Constables of the
 } Township of _____ in the said County
 [Seal.] of _____

WHEREAS complaint hath been made before me A—
 M—, Esquire, one of His Majesty's Justices of the peace
 in and for the said County, upon the Oath of A— I—, of
 _____ in the said County, yeoman, that A— O— of
 _____ in the same County, butcher; did on the — day
 of —, in this present year of our Lord, violently assault
 him the said A— I— and did _____ at _____
 in the County aforesaid: THESE are therefore in His said
 Majesty's name, to command you forthwith to apprehend the
 said A— O—, and to bring him before me, to answer
 unto the said complaint, and to be further dealt withal accord-
 ing to law.

Given under my hand and seal, the — day of — in
 the year of our Lord one thousand eight hundred and thirty—
 A— M—, J. P.

When the party is brought before the Justice on the War-
 rant, the Justice has no authority to examine witnesses and
 decide upon the complaint; but his duty merely is, to require
 the party to find sureties, and to be bound with them for his ap-
 pearance at the next General Sessions in the County, to answer
 to the complaint, and in the mean time to keep the peace. If
 he refuses, or fails to produce such sureties, and to be so bound,
 the Justice must immediately commit him to the gaol, by a
 written commitment, to be detained there until he do so. If
 he produce the sureties, the Justice must bind them all in recog-
 nizance according to the form No. 1. hereafter given, in such
 sums as in his discretion he shall think fit, and must then dis-
 charge the party. He must also bind over the complainant,
 but without sureties, to appear, &c.; according to the form
 No. 2; and must make a Minute of the respective recog-
 nizances, and give it in to the Clerk of the Peace, at
 or before the next General Sessions. The duty of the Jus-
 tice out of Sessions is then fulfilled, and it will not be lawful for
 him at any time after, to make, or sanction, any compromise
 between the parties; but they must appear at the Sessions as
 they were bound.

Directions.

In ordinary cases of assault, the party complained of is
 bound in £20, and each of his sureties in £10; but in aggra-
 vated or enormous cases, the sums should be greater, and in
 small or trifling assaults, one surety may suffice. The Justice

ASSAULT AND BATTERY.

need not write out the forms of the respective Recognizances ; but he must repeat them over to the parties, respectively, as they stand before him, and they must express their consent.

ACKNOWLEDGMENT OF RECOGNIZANCE BY PARTY CHARGED,
AND HIS SURETIES.

You A—— O—— do acknowledge to owe to our Lord the King, the sum of £20, and you B—— O—— and you C—— O—— do severally acknowledge to owe to our Lord the King, the sum of £10, of lawful money of this Province, to be made and levied of your goods and chattels, lands and tenements, respectively, to the use of our Lord the King, his heirs and successors, if you A—— O—— shall make default in the following condition.

The condition is, that if you A—— O—— shall personally appear at the next General Sessions of the peace, to be held in and for this County, to answer to this complaint of an Assault and Battery committed by you A—— O—— on A—— I——, and shall abide the judgment of the Court thereupon, and in the meantime shall keep the peace and be of good behaviour towards His Majesty, and all his liege people, and especially towards the said A—— I——, then this Recognizance shall be void, otherwise shall remain in full force. Are you all content.

ACKNOWLEDGMENT OF RECOGNIZANCE BY COMPLAINANT.

You A—— I—— do acknowledge to owe to our Lord the King, the sum of £10 of lawful money of this Province, to be made and levied of your goods and chattels, lands and tenements, to the use of our Lord the King, his heirs and successors, if default shall be made in the following condition.

The condition is, that if you A—— I—— shall personally appear at the next General Sessions of the peace, to be held in and for this County, and shall there prefer a bill of indictment, and give evidence thereon, before the Grand Jury, touching this your complaint of an Assault and Battery committed on you by A—— O——, and shall also give evidence before any Jury which shall pass upon the trial of such indictment ; then this Recognizance shall be void ; otherwise shall remain in full force. Are you content.

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ASSAULT AND BATTERY.

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MINUTE OF RECOGNIZANCES.

The King vs. A— O— for an Assault, &c. on A— I—	}	A— O— bound in £20, and B— O— of ——— yeoman, and C— O— of ——— butcher, in £10 each, for appearance, &c. of A— O— at next General Sessions, to answer &c. Taken — day of — 1837.
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A— I— bound in £10 to appear and give evidence, &c.
at next General Sessions, &c. Taken — day of —, 183
before me, A— M— J. P.

The Justice should also keep a similar minute of recognizance, from which to make up a regular record, in case the parties bound should not appear, or should otherwise fail in the condition, and the recognizance be estreated; or that for any other reason, the Justice might be required to make up such a record. For the form of such Record, and also of a Commitment, see respectively, Titles—Bail and Commitment.



BAIL.

- I. OF BAIL IN GENERAL.
- II. FOR WHAT OFFENCES JUSTICES OF THE PEACE CANNOT BAIL.
- III. FOR WHAT OFFENCES TWO OR MORE JUSTICES MAY BAIL IN THEIR DISCRETION.
- IV. IN WHAT CASES ONE JUSTICE MAY BAIL IN HIS DISCRETION.
- V. IN WHAT CASES A JUSTICE OUGHT TO BAIL.
- VI. OF THE RECOGNIZANCE OF BAIL.

I. OF BAIL IN GENERAL.

This title is only to be understood of Bail in Criminal Offences.

BAIL signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him, that he shall appear at a day limited, to answer and be justified by the law. And as Bail is a custody, the Bail may retake the prisoner, if they doubt he will fly, and detain him, and bring him before a Justice, and the Justice ought to commit the prisoner in discharge of the bail, or put him to find new sureties. 1 Hale's Sum. 96. 1 Burn's, 200.

If a person be brought before a Justice, and it appear that no felony is committed, he may discharge him ; but if a felony be committed, though it do not appear that the party accused is guilty, yet he cannot be discharged, but must be committed, or bailed. 1 *Burn's*, 200.

Excessive Bail

By the declaration of rights, 1 *Will*, *Sess.* 2. c. 2, excessive bail ought not to be required. 1 *Burn's*, 207.

Denying Bail.

To refuse bail where the party ought to be bailed, (the party offering the same) is a misdemeanor, punishable not only by the suit of the party, but also by indictment. *Id.*

Improperly Bailing.

Admitting bail, where it ought not, is punishable by the Judges of Assize, by fine, or punishable as a negligent escape at common law. *Id.*

A Justice committed a man on suspicion of stealing a mare, and bound over the owner to prosecute. Afterwards, upon examining two other persons, he admitted the party to bail. The prosecutor appeared at the Assizes, and a bill was found, but the party accused did not appear. And the Court granted an information against the Justice, declaring they should not have bailed the man themselves. *Rex vs Clarke*, 2 *Str.* 1216.

Party confessing not bailable.

Those who on their examination own themselves guilty of a felony alleged against them, and are charged in their *mittimus* with the felony so confessed, seem to be excluded from bail ; for *bail is only proper, where it stands indifferent whether the party be guilty or innocent of the accusation against him.* 1 *Burn's*, 205.

Insufficiency of Bail.

If a Justice take insufficient surety, and the party appear not, he is fineable by the Judge of Assize. But if the prisoner appear thereupon, the Justice is safe. 1 *Burn's*, 204.

If a person who has power to take bail be so far imposed upon, as to suffer a prisoner to be bailed by insufficient persons, it is said, that either he or any other person who hath power to bail him, may require the party to find better sureties ; and to enter into a new recognizance with them, and may commit him on his refusal ; for that insufficient sureties are no sureties. *Id.* 205.

Number of Sureties and amount.

And the person who is to take the bail, may examine them on their oaths, concerning their sufficiency. *Id.*

No person ought in any case to be bailed for felony, by less than two sureties. The only sure way of proceeding in this case, is to take care, that every one of the Bail, be of ability sufficient to answer the sum in which they are bound, which ought never to be less than £40 for a capital crime, but may be as much higher, as the Justices in discretion shall think fit to require, upon consideration of the ability and quality of the prisoner, and the nature of the offence. *Id.*

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Although a person be committed to be detained without bail or mainprize, yet if the offence be by law bailable, he that hath power of bailing may bail him. *Id.*

A married woman cannot be received as bail. 2 *Haw. P. C. c. 15, § 84.* Nor a person under the age of 21 years. *Pet. on Bail, 510.* Married Women & Minors

All persons who neglect to offer bail for offences which are bailable, must be committed. 1 *Burns, 552.*

II. FOR WHAT OFFENCES JUSTICES OF THE PEACE CANNOT BAIL.

Anonymous Letters, demanding Money, &c. Felony without benefit of clergy, by the 32 G. 2, c. 13. 1 V. 18. *Perpetual.*

Arson or House burning. By the 32 G. 2, c. 13. 1 V. 17, Persons shall suffer death, who shall burn any dwelling house, barn, outhouse or warehouse of another, or any public building, or any hovel, cock, mow, rick, or stack of corn, straw, hay, or wood of another. Also, see 1 *Burn's, 203.*

Burglary. Breaking into a dwelling house by night, with intent to commit a felony. By the 32 G. 2, c. 13. 1 V. 16, Persons who shall by night, break open and enter, any dwelling house, shop or warehouse, or any vessel lying so near the land that it be adjudged within the County, with an intent to commit a felony; whether such felonious intent be executed or not, shall suffer death. *Perpetual.*

Coin. Counterfeiting gold or silver coin of England or Great Britain is declared to be treason by the 32 G. 2, c. 13. 1 V. 15. *Perpetual.*

Commitments, by the superior Courts, or on process for contempt to such courts. 3 *Edw. 1, c. 15.* 2 *Haw. c. 15, § 37 & 64.* 1 *Burn's, 202, 205.*

Confession of Crime. Those who on their examination own themselves guilty of a felony alleged against them, seem to be excluded from Bail; for Bail is only proper, where it stands indifferent whether the party be guilty or innocent of the accusation against him. 2 *Haw. c. 15, § 40.* 1 *Burn's, 205. Pet. on Bail, 490.*

Counterfeiting gold or silver coin of England or Great Britain, or the King's Great or Privy Seal, or the Seal of this Province. By the 32 G. 2, c. 13, 1 v. 15, declared to be high treason. *Perpetual.*

Duelling. Where death ensues. *Pet. on Bail, 491.*

Dykes and Banks of Rivers, breaking down, &c. This is

- felony, without benefit of clergy, by the 6 & 7 G. 3, c. 1. 1 V. 122. *Perpetual.*
- Embezzling.** By the 32 G. 2, c. 13, 1 V. 17. Servants embezzling jewels, money, or goods entrusted to them by their masters, above the value of 40 shillings, shall suffer death, except Apprentices within the age of 15 years. *Perpetual.*
- Escapes or Prison breaking.** 2 Co. Inst. 188. 1 Burn's, 203. *Pet. on bail, 491.*
- House-breaking.** Persons who shall in the day time, break any dwelling house, shop, or warehouse thereunto belonging, or therewith used, and steal money or goods to the value of five shillings, shall suffer death, and also their aiders and abettors. By 32 G. 2, c. 13, 1 V. 17. *Also see Pet. on bail, 493.*
- Larceny from the person.** By the 32 G. 2, c. 15, 1 V. 17. One who shall feloniously take money or goods from the person of any other, privily without his knowledge; and also the aiders and abettors, shall suffer as felons without benefit of clergy. *Perpetual.*
- Larceny, or Stealing at Fires.** This is punishable with death, by the 2 G. 3, c. 5. 1 V. 81. *Perpetual.*
- Maiming.** Persons who shall of malice, and by lying in wait, cut off or disable any limb or member of any person, with intention to kill, or maim, or disfigure such person, shall suffer death; and also their counsellors, aiders and abettors, privy to the offence. By 32 G. 2, c. 15. 1 V. 15. *Perpetual.*
- Manour, or person taken with the stolen goods upon him.** In this case the person standeth not indifferent whether he be guilty or no, being taken with the thing stolen as it were in his hand. 2 Co. Inst. 188. 1 Burn's, 202. *Pet. on bail, 493.*
- Manslaughter.** It seems agreed that Justices of the Peace, who have power to bail a man for a *light suspicion of homicide*, cannot bail any such person for manslaughter, or even excusable homicide, if it manifestly appear, that he was guilty of the fact, let it be ever so plain that it cannot amount to murder. 2 Haw. c. 15, § 34. 1 Burn's, 202.
- Murder.** 2 Co. Inst. 186. 1 Burn's, 201. 3 East's P. C. 163. *Pet. on bail, 494.*
- Offences Manifest.** This seems to be understood of inferior crimes of an enormous nature under the degree of felony; as dangerous riots, savouring of high treason; exorbitant rescues; misprision of treason; maim, and such like hei-

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Rape. On females above the age of 12 years. Also on females under the age of 12 years, though with their consent. By 32 G. 2, c. 13, 1 V. 16. *Perpetual.* Also see *Pet. on bail*, 495.

Robbery. By the 32 G. 2, c. 12, 1 V. 17, persons who shall rob any dwelling house in the day time, any person being therein; or break any dwelling house, shop or warehouse thereunto belonging or therewith used, in the day time, and feloniously take away any money or goods of the value of five shillings therein being, although no person shall be within such dwelling-house, shop, or warehouse; or who shall rob any other; or feloniously take away any goods in any dwelling-house, the owner or any other person being therein, and put in fear; or who shall by night or by day, rob, or by violence take money or goods from any person, putting him in fear, in any highways, or in any streets or lanes of a town, they, and their aiders and abettors, shall suffer as felons without benefit of clergy. And by § 14 of the same Statute, stealing, or taking by robbery in any of the above instances, bills of exchange, bonds, warrants, bills, or promissory notes for the payment of money, is punishable in the same manner. *Perpetual.*

Sacrilege, or feloniously taking of any goods out of any church, or chapel, 5 *Burns*, 85. *Pet. on bail*, 495.

Shooting at a person. By the 32 G. 2, c. 13. 1 V. 18. Whosoever shall maliciously shoot at any person in any dwelling-house or other place, shall suffer as a felon without benefit of clergy. *Perpetual.* See *Pet. on bail*, 496.

Shop lifting. 10 & 11 W. 3, c. 23. *Pet. on bail*, 496.

Stabbing. A person who shall stab or thrust another, that hath not then any weapon drawn, or that hath not then first stricken, the party who shall so stab, or thrust; so as the person so stabbed or thrust shall die thereof within six months, although not proved to be done of malice aforethought, yet he shall be excluded from the benefit of clergy. By 32 G. 2, c. 13, 1 V. 15. *Perpetual.*

Thieves openly defamed and known. These, as it seems, ought not to be bailed for any fresh felony, whereof there is probable evidence against them. But this seems in a great measure to be left at the discretion of the person who has power to bail them, who if he find it reasonable

strongly to presume them to be guilty, ought not to Bail, but commit them. 3 *Ed.* 1, c. 15. 2 *Haw.* c. 15, § 44. 1 *Burn's*, 203.

Treason. By the 32 G. 2, c. 13. 1 V. 15. All treasons declared by the Acts of Parliament of England or of Great Britain, shall be deemed and adjudged to be treason within this Province. *Perpetual.*

Unnatural Crime. By the 32 G. 2, c. 13. 1 V. 16, this crime is made felony without benefit of clergy. *Perpetual.*

Wrecks; Stealing goods from, &c. Persons who shall plunder, steal, or destroy any wrecked vessels, or any goods wrecked or found floating in rivers, bays, or harbours; or contiguous to the shore; or shall steal the tackle or provision of any wrecked vessel; or shall beat, or wilfully obstruct any person endeavouring to save his life from a wrecked vessel; or shall put out any false lights, with intention to bring a vessel into danger, shall suffer death as in cases of felony, without benefit of clergy. Provided, that if the goods stolen be under the value of 40 shillings, and be stolen without any circumstances of outrage or violence, the offender shall only be punished as for petit larceny. By 41 G. 3. c. 14. 1 V. 446. *Perpetual.*

III. FOR WHAT OFFENCES TWO OR MORE JUSTICES MAY BAIL IN THEIR DISCRETION.

Accessaries. But Accessaries to felonies are not to be bailed, unless they be of good reputation. And it seems at this day to be settled, that where there are strong presumptions of guilt, such accessaries are not bailable. 2 *Haw.* c. 15. § 53. 1 *Burn's*, 204. *Pet. on bail*, 497. In treason there are no accessaries, but all are principals; therefore this title does not apply to any case of treason. See 2 *Haw.* P. C. c. 29, § 2, 5. In crimes under the degree of felony, there can be no accessaries, but all persons concerned, if guilty at all, are principals. 1 *Hale*, P. C. 613.

Bail, personating. By 11 G. 3, c. 3, 1 V. 166, *Perpetual.*
Coin, Counterfeiting, &c. or uttering of foreign coin, current in this Province. By 32 G. 2, c. 20, 1 V. 29. *Perpetual.*

Conspiracy, to injure third persons, or the community, 1 *Burn's*, 566, *Pet. on bail*, 498.

Embezzling King's Stores, &c. By the 32 G. 2, c. 13, 1 V. 18, embezzling any of His Majesty's Stores, or the utensils, furniture, or cloathing in any store-house, or hospital

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of His Majesty, to the value of twenty shillings or upwards, is declared to be larceny and felony. Also, embezzling goods or furniture let with lodgings. *Perpetual.*

Forgery. Of deeds, wills, bonds, bills, notes, receipts, acquittances, &c. See the 32 G. 2. c. 20, 1 V. 30. *Perpetual.* Of Certificates respecting Quarantine. By 2 W. 4, c. 13. 4 V. 143. *Temporary.*

Goods Stolen, buying or receiving of. By 32 G. 2, c. 13, 1 V. 17. *Perpetual.*

Larceny or theft. This is to be understood of simple larceny of the value of twenty shillings or upwards ; or larceny unaccompanied with any of those circumstances of aggravation, which by numerous Statutes make it a capital offence, as in house breaking, highway robbery, &c. See 3 Burn's, 176. Also the 32 G. 2, c. 13, § 22. 1 V. 18, and by § 14 of this Statute, the stealing of any bills of Exchange, bonds, warrants, bills, or promissory notes for the payment of money, is declared to be the same offence as stealing money or goods of the same amount as is due thereon. For stealing Treasury Notes, see Notes, under this Title.

Maim. At common law, or where not made a felony by any Statute. 2 Haw. c 15, § 45. 1 Burn's, 203.

Notes, Treasury, Stealing of. By the 9 G. 4, c. 3—10 G. 4, c. 43—11 G. 4, c. 9—2 W. 4, c. 64.

Counterfeiting, or knowingly uttering of Counterfeit Notes issued under the Statutes, 57 G. 3, c. 16. 3 V. 15,—58 G. 3, c. 32. 3 V. 36,—59 G. 3, c. 9. 3 V. 45,—60 G. 3, c. 18. 3 V. 69,—1 & 2 G. 4, c. 4. 3 V. 99,—7 G. 4, c. 14. 3 V. 260. This offence under these Statutes, is constituted a felony by the punishment therein prescribed, of nailing one of the ears of the offender to the pillory.

Polygamy, or having a second husband or wife, the first being alive, and the first marriage not declared void. By 32 G. 2, c. 17, 1 V. 24. *Perpetual.*

Receivers of Felons, knowing them to be such. 3 Ed. 1 c. 15. These are Accessories after the fact. 2 Hale, 134, 1 Burn's, 204.

Rescues exorbitant. 2 Haw. c. 15, § 45, 1 Burn's, 203.

Rewards, taking, to help persons to stolen goods. By Eng. Stat. 4 G. 1, c. 11, which is extended to his Majesty's dominions in America, This offence is declared to be felony, unless they cause the felon to be brought to trial. See Note to the 32 G. 2, c. 13. 1 V. 20

Suspicion, light. But if the presumption be strong, or the defamation great, the Justices may refuse to bail them

Hale's Sum. 102. And they must also be of good fame.
2 Inst. 190, 1 *Burn's*, 204.

Woods, maliciously setting fire to, on reserved and ungranted land. By 14 & 15 G. 3, c. 3. 1 V. 184. *Perpetual*.

It seems to be a good general rule that so far as any persons are judges of any crime, so far they have the power of bailing a person indicted before them of such crime; and upon this ground it seems clear, that any two Justices may of common right bail persons indicted at the Sessions, for that any two such Justices may hear and determine the indictment. 2 *Haw. c.* 13, § 54. 1 *Burn's*, 205.

IV. IN WHAT CASES ONE JUSTICE MAY BAIL IN HIS DISCRETION.

Affray. 1 *Haw. P. C. c.* 63, § 20. 4 *Bl. Com.* 145. *Pet. on bail*, 497. But if a person have dangerously wounded another, the Justice ought to be very cautious how he takes bail until the year and day be past, for if the party die, and the offender appear not, he is in danger of being severely fined. 1 *Haw. c.* 63, § 19. 1 *Furn's*, 202. *Pet. on bail*, 497.

Assault, with intent to commit felony. As by the 32 G. 2, c. 13. 1 V. 16. Assaults with attempt to commit an unnatural crime; or to commit a rape.

Compounding Felonies. 1 *Haw. P. C. c.* 59, § 5. *Pet. on bail*, 498.

False tokens, or counterfeit letters to obtain money or goods. By the 32 G. 2, c. 20. 1 V. 31. *Perpetual. Pet. on bail*, 498.

Incest. By 32 G. 2, c. 17. 1 V. 25. *Perpetual*.

Indecencies. *Pet. on bail*, 498.

Larceny, petit, or stealing under the value of 20 shillings. By 32 G. 2, c. 13. 1 V. 18, It seems to be agreed, that in order to the bailing of persons charged with this offence, there is no necessity that they be of good reputation; yet if such persons be taken with the stolen goods upon them, or confess the fact, or their crime be otherwise open and manifest, it seems that they ought not to be bailed; but if there be any colour of probability for their innocence, it seems most agreeable to the intention of the Statute, 3 Ed. 1 c. 15, to bail them. 2 *Haw. c.* 15, § 50. 1 *Burn's*, 204.

Notes, Treasury—Counterfeiting, or knowingly uttering such counterfeit notes. By Statutes 9 G. 4, c. 3. 4 V. 23,—

10 G. 4, c. 43. 4 V. 69,—11 G. 4, c. 94. V. 83,—2 W. 4, c. 64, 4 V. 191. The offence under these Statutes is only a misdemeanor, being punishable merely by imprisonment in Bridewell.

Perjury, and procuring witnesses to commit perjury. By 32 G. 2, c. 20. 1 V. 30, 31. *Perpetual. Pet. on bail*, 498.

Riot. 2 Haw. c. 47, § 8. 5 *Burn's*, 14.

Trespasses for which one ought not to lose life or member. 3 *Ed.* 1, c. 15. But it seems reasonable to qualify the generality of this expression with this limitation,—that such accusation ought to be either on a light suspicion, or else that the offence be inconsiderable, or that it be not excluded from bail by some special Act of Parliament. 2 Haw. c. 15, § 45. 2 *Hale*, 135. 1 *Burn's*, 204.

NOTE,—The trespasses here mentioned, are not to be understood to mean or include mere trespasses of a civil nature to the lands or goods of an individual, under any Statutes of the Province, or otherwise, as this Title of Bail does not relate to any civil, but only to criminal cases.

Wounding. But if a person have dangerously wounded another, the Justice ought to be very cautious, how he takes bail till the year and day be past; for if the party die, and the offender appear not, he is in danger of being severely fined. 1 Haw. c. 63, § 19. 1 *Burn's*, 202.

One Justice alone, cannot set at large on bail, a person arrested on a charge of *felony*, or suspicion thereof, but must commit him, unless he is bailed by two Justices, or by the Court of Sessions. 1 *Burn's*, 206.—*Note of Ed.*

V. IN WHAT CASES A JUSTICE OUGHT TO BAIL.

Assault and Battery. Common cases of. *Chitty on C. L.* 1 V. 96.

Blasphemy. By 32 G. 2, c. 20. 1 V. 28. *Perpetual. Pet. on bail*, 499.

Cattle. Maliciously killing or maiming; by 4 & 5 G. 4, c. 4. 3 V. 181. *Perpetual*.

Contagious Diseases. By the 2 W. 4, c. 14. 4 V. 149, respecting contagious diseases, persons infringing any of the provisions of the Act, or any orders of a Board of Health, are declared guilty of a misdemeanor. *Temporary, being continued for 3 years*, by 5. W. 4, c. 18. 4 V. 404.

Injuries. Wilful and malicious to real or personal property, either of a public or private nature. By 2 W. 4, c. 48. 4 V. 167. *Temporary*.

Libel. It is now clearly settled, that a Magistrate has the power of apprehending and of requiring bail from a libeller; and in default of its being given, of committing him. *Bull vs. Conant*, 1 B. & B. 548. *Pet. on bail*, 499.

Vagrancy. By the 14 & 15 G. 3, c. 5. 1 V. 187, All idle, and wandering, and disorderly persons, and common beggars, may be apprehended by any constable, or other person, or upon the warrant of a Justice, and may be required by a Justice to find one responsible house-keeper to be bound for their appearance before the Justice, for final examination at a future day; and on default of finding such surety, the Justice may commit any such person to a prison or house of correction, for a time not exceeding fourteen days. *See the Statute. Perpetual.*

Persons apprehended for small misdemeanors, must be bailed, unless they be excluded from it by some special Act of Parliament. 2 *Hale*, 127. *Chitty on C. L.* 1 V. 196.

Personating
bail a felony.

By the 11 G. 3, c. 3. 1 V. 166, Any person who shall personate another, and enter into recognizance of bail in his name, whereby the individual so personated shall be liable to the payment of any sum of money, to be recovered in the action wherein such individual is so personated, shall be adjudged to be a felon, and shall suffer death.

VI. OF THE RECOGNIZANCE OF BAIL.

WHERESOEVER Justices have power to bind over any man to appear at the Assizes or Sessions, or to take sureties for any matter or cause, they may take a Recognizance. But they can take no recognizance, but only of such matters as concern their office; and if they do it seemeth to be void. 5 *Burn's*, 6.

Although the jurisdiction of the Justices is confined to the limits of their own county; yet it is said, that recognizances voluntarily taken before them in any other place, are valid. 2 *Haw. c.* 37. *Pet. on bail*, 511.

Every Obligation and Recognizance taken by Justices of the peace, must be made to *our Lord the King*, on pain of imprisonment of any person that shall take it otherwise. It must also contain the name, place of abode, and trade or calling, both of principal and sureties, and the sums in which they are bound. And the condition is either indorsed or underwritten, or contained within the body of it, upon the performance of which the recognizance shall be void. 5 *Burn's*, 7.

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by their names, thus :—" You A. O. acknowledge to owe to our Sovereign Lord the King, the sum of ———, and you A. B. and you C. D. do severally acknowledge to owe to our said Lord the King, the sum of ——— to be levied of your respective goods and chattels, lands and tenements, for the use of our said Lord the King, his heirs and successors ; if default shall be made in the condition following, that is to say ;—if you the said A. O. shall personally appear at the next sitting of the Supreme Court of this Province, (or, at the next General Sessions of the Peace, as the case may be,) to be holden in and for this County, then and there to answer to our Sovereign Lord the King, for and concerning the felonious taking and stealing of, &c. ——— (or as the case may be,) whereof you A. O. stand charged before us His Majesty's Justices of the Peace for this County ; and to do and receive what shall by the Court be then and there enjoined you, and shall not depart the Court without licence, then this Recognizance shall be void ; otherwise shall remain in force."

This recognizance of bail may be thus verbally taken, and the record of it may be made up at any time afterwards, according to the form hereafter given. The Justices should make a minute of names, date, &c., from which to make up such record. The parties bound need not at any time sign the Recognizance, yet it is a matter of record presently, so soon as it is taken and acknowledged ; although it be not made up. *See 5 Burn's, 7.*

Directions.

And when it is made up, if the Justices shall only subscribe their names to it, without their seals, this is well enough ; and that may be in either of these sorts,—*Acknowledged before us.* J—— P——, R—— P—— ; or only to subscribe their names. *Dalt. c. 176. 5 Burn's, 8.*

By the 8. G. 3, c. 3. 1 V. 136, The Justices of the peace who shall let to bail any person, charged with felony, shall certify such bailment ; and all recognizances taken touching such charge, to the Supreme Court, at its next sitting in the County. *Perpetual.*

Certifying
Bailment, &c.

Previous therefore to such sitting of the said Court, the Justices should in every such case, make up and sign the Record of recognizance, according to the form hereafter given ; and at or before the meeting of the Court, should give it in to the Clerk of the Crown, or his deputy, in the County, together with all recognizances of witnesses, and all examinations taken before them, touching the charge ; or if the recognizance has been taken for appearance at the Sessions, the Justices should in like manner make up the record, and hand it in, with all other recognizances, and all examinations, to the Clerk of the Peace, at or before the next meeting of the Sessions.

Justices should certify their recognizances for keeping the peace, to the next Sessions, that the party may be called ; and if he make default, the default shall be recorded ; and the recognizance, with the record of the default, shall be sent and certified into the Supreme Court. *See 5 Burn's, 8.*

It should seem that Justices of the Peace in the General Sessions, should have the power of judging what recognizances, certified there, concerning offences cognizable in that Court, should be estreated. *Id.*

The recognizances taken by Justices in one County upon a backed warrant, may be by them certified into another County. *Pet. on bail, 511.*

The *Conditions* of recognizances in a variety of cases, are interspersed under their proper Titles.

FORM OF RECOGNIZANCE WITH SURETIES.

County of }

BE IT REMEMBERED, that on the — day of —, in the — year of the reign of our Sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland, King defender of the faith, A — O — of — in the County aforesaid, labourer, and A — S — of — in the County aforesaid, tailor, and B — S —, of — in the County aforesaid, carpenter, personally came before us, A — M — and A — R —, two of His said Majesty's Justices of the peace in and for the said County, and severally and respectively acknowledged themselves to be indebted to our said Lord the King, that is to say, the said A — O — the sum of — pounds, and the said A — B — and C — D — each the sum of — pounds separately, and of good and lawful money of this Province of Nova Scotia, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lord the King, his heirs and successors, if the said A — O — shall make default in the Condition hereunder written. Taken and acknowledged, the day and year above written. Before us,

A — M —, J. P.

A — R —, J. P.

The Condition of this Recognizance is such, that if the above bound A — O — shall personally appear before His Majesty's Justices of the Supreme Court, for the said Province, at the next sitting of the said Court, (or if at the Sessions— "before the Justices of our said Lord the King, assigned to keep the peace within the said County, and likewise to hear and determine divers felonies, trespasses, and other misde-

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meanors, in the said County committed, at the next General Sessions of the Peace,") to be holden in and for the said County, then and there to answer to our said Lord the King, for and concerning the felonious taking and stealing of ———, the property of E— F—, yeoman, with the suspicion whereof the said A— O— stands charged before us the said Justices, and to do and receive what shall by the Court, be then and there enjoined him ; and shall not depart the Court without licence, then the above written Recognizance shall be void.

If the party had been finally committed to prison on the charge, and was held under such commitment at the time of the bail being given, there should issue a writ for his deliverance in the following form :—

County of } A— M— and A— R—, Esquires, two
 { of His Majesty's Justices of the Peace in and
 [Seal.] for the said County of —, To the Keeper
 [Seal.] of His Majesty's gaol at —, in the said
 County, greeting : Forasmuch as A— O— of —, in the
 said County, labourer, hath before us found sufficient sureties
 to appear before His Majesty's Supreme Court for this Province,
 at the next sitting of the said Court, (or at the next General
 Sessions of the Peace) to be holden in and for the said County,
 then and there to answer to our said Lord the King for and
 concerning the felonious taking and stealing of —, (for the
 suspicion whereof he was taken and committed to your said
 gaol.) We command you on behalf of our said Lord the King,
 that if the said A— O— do remain in your said gaol, for the
 said cause, and for none other, then you forbear to detain
 him any longer ; but that you deliver him thence, and suffer
 him to go at large ; and that upon the pain that will thereon
 ensue. Given under our hands and seals, at — in the said
 County, the — day of —, in the year of our Lord —.

A— M—, J. P.

A— R—, J. P.



BANKS OF RIVERS, see RIVERS.

BASTARDS.

- I. WHO SHALL BE DEEMED A BASTARD.
- II. OF SECURING THE MAINTENANCE OF BASTARDS.
- III. OF THE PUNISHMENT OF A WOMAN FOR MAKING A FALSE ACCUSATION CONCERNING BASTARDY.
- IV. MURDERING A BASTARD CHILD.

I. WHO SHALL BE DEEMED A BASTARD.

If a child be begotten, whilst the parents are single, and they will endeavour to make an early reparation for the offence, by marrying within a few months after ; our law is so indulgent, as not to bastardize the child, if it be *born*, though not *begotten* in lawful wedlock. 1 *Black. Com.* 456.

If a woman great with child, marry, it is the child of the husband ; for when they testify their consent by a public marriage, before the birth of the child, it is a public acknowledgment, that the child is his ; for at that time the child is one with the mother ; and therefore in taking the mother he takes the child with her. 1 *Burn's*, 242.

The child of a married woman may be born a bastard, and if so, shall be within the remedial law concerning bastards. Even though the husband and wife are both in one country, if there be sufficient proof that he had no access to her, the child will be a bastard. 1 *Burn's*, 239.

The wife may be a witness to the fact of her incontinence, but not to the fact of the non-access of her husband. *Id.*

Evidence of
Parents as to
Legitimacy or
otherwise.

A father has been permitted to give evidence to bastardise the son, by disproving a marriage, and there are many other cases in which it has been decided, that *the parents may be called as witnesses with respect to the legitimacy of their issue* ; and if they may be called to prove that they are legitimate children, there is no reason why they should be considered as incompetent when called upon to prove that the children are illegitimate. But in all these cases, such testimony is open to great observation. *Rex vs. Bramley*, 6, *T. R.* 330. 1 *Burn's*, 242.

NOTE. It is to be understood, however, that a parent who is *a party in the cause*, cannot be admitted as a witness.

Divorce and
Voluntary Se-
paration.

Where a woman is separated from her husband by a divorce *à mensa et thora*, the children she has during the separation are bastards ; for a due obedience to the sentence shall be intended, unless the contrary be shewn ; but if a husband and wife without sentence, do part, and live separate, the children

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shall be taken to be legitimate, and so deemed till the contrary be proved, for access shall be intended. 1 *Burn's*, 242.

The law hath appointed no exact certain time for the birth of legitimate issue by the widow, after the death of her husband. A child born forty weeks and nine days after the death of the husband, has been allowed to be legitimate. *Id.* 243.

Time of Birth

II. OF SECURING THE MAINTENANCE OF BASTARDS.

1. *Securing the reputed Father, and of the Bond of Indemnity.*
2. *Of the order of Filiation and Maintenance.*
3. *Of the right of the Father or Mother to the custody of the Child.*

1. *Securing the reputed Father, and of the Bond of Indemnity.*

By the 32 G. 2, c. 19. 1 V. 27, it is enacted, "that if any woman shall be delivered of a bastard child, which shall be chargeable or likely to be chargeable to the Province, she having declared to the midwife, or other person assisting her at the time of delivery, who the father of such child was, and shall have at some time before, declared herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to any place within the Province; and shall in either of such cases, upon examination to be taken in writing, upon oath, before one Justice of the Peace, near where such place shall lie, charge any person with having gotten her with child; it shall and may be lawful for such Justice, upon application made to him by the Overseers of the Poor of such place, or any one of them; or some substantial householder of such place, to issue out his warrant to apprehend such person so charged as aforesaid, and to bring him before him, or some other of His Majesty's Justices, and to commit such person to gaol, or the house of correction, unless he give security to indemnify such place from the supporting or maintaining such child or children, and shall enter into recognizance, with sufficient security, for his appearance at the next Quarter Sessions, where he shall be continued on recognizance till the woman is delivered of such child or children. Provided, that if such woman shall die or be married, before she be delivered; or miscarry of such child or children, or shall appear not to have been with child at the time of her examination, such person shall be discharged from his recognizance at the next Sessions, or immediately released out of custody if committed." *Perpetual.*

This clause of the Statute, is nearly the same with the

first and second Sections of the English Statute, 6 G. 2, c. 31. but it is rather obscurely worded, in respect to its being intended to apply as well to a case *after*, as to one *before* the birth of the child ; but upon the whole it would seem to include both.

The appearance of the woman before the Justice, for the purpose of examination, where it is before the birth of the child, cannot be compelled, but must be entirely voluntary, as appears from a case cited in 1 Burn's, 246, in which it was said by the Court, that "the child cannot be illegitimate before it is born, there being always a possibility that it may be born in lawful wedlock." Consequently in such case, the application for the warrant against the reputed father cannot be made ; nor the warrant be issued, until such voluntary examination of the woman has been taken.

A Constable having a warrant to apprehend the reputed father of a bastard child, should execute it immediately, and if he shall willingly or negligently suffer him to escape, he may be bound over to the Sessions, and there indicted, fined and imprisoned ; and under the influence thereof, be compelled to make satisfaction to the prosecutors. 1 Burn's, 243.

A private soldier may be apprehended on a charge of bastardy ; and if he refuses to give the security to indemnify the place, and to enter into recognizance to appear at the Sessions as by law required, he may be committed to gaol until he do so, for the charge is of a criminal nature. *Id.* 244.

Directions.

When the party is before the Justice, on the warrant, the Justice is not authorised to enter into any investigation of the merits of the case ; but his duty is, immediately to require of the party to find a surety or sureties to be bound with him in a bond, to indemnify the township or place, from the maintenance of the child, and also to enter into a recognizance with one surety or more, for his appearance in the next General Sessions in the County. If he produces such sureties, (of the sufficiency of which the Justice, in his discretion must judge,) the bond of indemnification and the recognizance, must be forthwith entered into, after the forms hereafter given, and the party be discharged ; but if he fails to find them, he must be sent to gaol with a written commitment ; and be there detained until such securities are given. The bond to indemnify, may be left with the overseers of the poor ; and the Justice must, before or at the commencement of the next Sessions, make out the record of the recognizance, or a minute thereof, and hand it in to the Clerk of the Peace, so that the party may be called thereon.

It may be considered doubtful, whether the taking of a bond under the foregoing clause of the Statute, or an order

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made by the Justices under the second clause of it, which will be hereafter set forth, is most convenient for the township. The suing upon a bond is both tedious and expensive, but then a bond will bind a man's executors ; whereas, the course of carrying an order into execution, is very short and easy ; but when the man dies, the order dies with him. See 1 *Burn's*, 247.

In an action on a bond to maintain a bastard child, no more can be recovered than the money actually expended ; nor more than the whole penalty of the bond ; and the Court will stay proceedings in an action on such a bond, on payment of the penalty and costs. *Id.* 247.

Under the foregoing Statute, the Overseers of the poor can only take security to indemnify the township or place ; they cannot take security by notes of hand or otherwise, for a sum of money in gross, payable at all events. *Id.* 248.

Nature and
Form of Security to indemnify.

But a *voluntary* bond, given by the putative father of a bastard child to the Overseers, conditioned for the payment of " a specified sum every three months, for so long, and until a certain bastard child should be deemed capable of providing for herself," has been decided to be valid ; and a recovery been had upon it ; the Court declaring, that it was not contrary to the general policy of the law ; being nothing more than a voluntary obligation for the maintenance of the child. 1 *M. & Sel.* 310. 1 *Burn's*, 248.

And in a case reported in 4 Taun. 498, the Court of C. P. decided, that a bond conditioned for payment to the Overseers of a parish, of a certain weekly sum, so long as a certain bastard child shall continue chargeable, is not illegal, or contrary to public policy. 1 *Burn's*, 249.

The Overseers do not need an *order* of Justices for maintenance of the child, to enable them to recover upon a bond given to indemnify the place. *Id.* 249.

To entitle Overseers to recover on a bond, it must appear that the expense was not incurred *voluntarily*, but in discharge of a legal obligation to defray it. *Id.* 250.

2. Of the Order of Filiation and Maintenance.

If security has not been given to indemnify the Place, the next thing in the course of proceeding is the Order of Filiation and Maintenance, to be made by the Justices : but if a bond of indemnification has been given, such order is not requisite. See 1 *Burn's*, 250.

By Section 2, of the 32 G. 2, c. 19, before cited, it is enacted, " that any two Justices of the Peace, near the place

where any bastard child shall be born, upon complaint made by the Overseers of the Poor, or any one of them, or of some substantial householder, upon due examination of the cause and circumstances, shall and may by their discretion, make an order for the relief of such place or children ; and for keeping such bastard child ; and that said mother or reputed father of such child or children, shall find sufficient security, that such child shall not become burthensome or chargeable to any place in said Province ; or pay the sum of twenty pounds, which shall be paid into the hands of the Overseers of the poor, for the support of such child or children, or other town uses. And if after the said order made by said Justices, and by them subscribed, and directed to the Overseers of the poor, any of said persons, viz.—either the father or mother, upon notice thereof, shall not for his or her part, observe and perform said order, then such party making default, to be committed to gaol or house of correction for the space of six months ; except he or they shall give sufficient security to perform said order, or else personally appear at the next Quarter Sessions, and abide by such order as shall be made at such Sessions, in that behalf ; and if no order shall be made at said Sessions, then to abide by the first order.” *Perpetual.*

As there is no power given to the Sessions, either under this Statute, or any other Statute of this Province, to make an original order in case of bastardy, they cannot make such original order ; but it must be made by two Justices, pursuant to the above Section of the Act. See 1 *Burn's*, 253. It is therefore not easy to imagine, for what purpose the reputed father is required by the first Section of the Statute, to enter into recognizance for his appearance at the next Sessions, in addition to giving the bond of indemnification.

Order may be made at any time.

There is no time limited for the proceeding of the Justices in this matter, so that the order may be made at any time after the birth of the child. It has been decided, that if the father run away and return, though fourteen years after, yet an order to fix the child on him is good ; for there is no Statute of limitations in these cases. 1 *Burn's*, 254.

Summoning and Hearing the Party charged.

Previous to making the order, the Justices must proceed as in all other like cases, by giving the party accused, an opportunity of being heard in his defence ; and therefore he should be summoned to appear before them for the purpose. *Rex vs. Cotton*, 1 *Sess. Cas.* 179. In this case it was said by one of the Judges,—“ No man in an office can be supposed to be so ignorant as not to know, that it is against natural justice to convict a man without a summons ; the examination ought to be so made, that the truth may appear ; and this must be, by examining both sides, otherwise it is partial.” 1 *Burn's*, 254.

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The summons to appear, may be by a third Justice. *Id.* 255.

Although the putative father should be summoned to appear previously to an order being made upon him, his presence during the mother's examination before the Justices, is not necessary to the validity of such order. *Id.*

If a person charged with a bastard child, is under any incapacity of attending, by illness or otherwise, the Justices may and ought to receive evidence on his behalf, but not otherwise. *Id.*

The examination of the mother before the two Justices, previous to making the order, must take place when the Justices are in the presence of each other. A separate examination before each one, or an examination by one, and a report thereof made by him to the other, will not suffice. *Id.* 260.

The mother may be examined on oath concerning the reputed father, and of the time and other circumstances; for the matter and the trial thereof, chiefly depend upon the examination and testimony of the mother. *Id.*

The examination of a pregnant woman, taken by a Justice under the first clause of the Statute, is evidence sufficient to authorise the two Justices to make an order of filiation on the putative father, though the woman be dead; for the examination having been taken before a Magistrate, in the course of a judicial proceeding, is certainly admissible evidence, like the depositions taken under 1 & 2 P. & M. c. 13, and not being contradicted by any other evidence, it seems to be conclusive. *Id.* 255.

The sex of the bastard child, and its name, and also the township or place wherein it was born, must all be expressly set forth in the order. *Id.* 262.

Not only the township or place where the child was born, is to be indemnified from the charge of its maintenance, but every other part of the Province, by the express terms of the Statute; and therefore the order, and the security to be given by the father or mother, that it shall not become chargeable, must be to that effect.

Either the father or mother, however, may avoid any order being made, or the giving such security, by paying into the hands of the overseers of the poor, twenty pounds for the support of the child, according to the option given by the Statute.

It has been decided, that an order of filiation upon the putative father of a bastard child, stating that the child "is likely to become chargeable," is sufficient, without shewing that it was *actually chargeable*. *Rex vs. Hartington—Upper Quarter 4 M. & S. 559.*

Extent of the Order and Security.

Form and particulars of the Order.

There must be an express adjudication by the Justices, as to who is the reputed father, otherwise the order will be quashed for such defect. The Court of K. B. quashed an order of bastardy, which only stated, "Whereas it hath appeared to us, &c." without an *express adjudication*, that the person charged, was the putative father. 1 *Burn's*, 263. But the Justices cannot adjudge a person *not* to be the putative father. *Id.*

An order for maintenance of a bastard, directing that a certain sum in gross shall be paid upon sight of the order, and after that, so much weekly, is good; for by the Statute, the Justices are to make an order for the relief of the place or child; and this may be only indemnifying the place for money laid out, before the reputed father was found. Also, if an order directs a sum to be paid towards the lying-in, and maintenance; it seems to be enough, without stating that the sum was expended by the overseers. *Id.* 264.

The Statute directs, that the order shall require security to be given, that "the child shall not become burthensome or chargeable to any place in the Province" without any limitation as to time; therefore, an order that so much money shall be paid weekly, or otherwise, until the child shall be of a certain age; or until it can get its living by working, will not be good; but the order must be according to the above express terms of the Statute. See 1 *Burn's*, 264.

The order must be for maintenance only, and cannot be for payment of a sum for putting out the child an apprentice, or the like. *Id.*

By the express words of the Statute, it will be seen, that the party charged in the order with the maintenance of the child, if failing to comply with it, after receiving notice thereof, shall be committed to gaol, or the house of correction, for six months; except he or she shall give security to perform such order, or to appear at the next Sessions and abide by such order as shall there be made; or if no order is made at the Sessions, then to abide by the first order.

Commitment
of the Mother.

By virtue of this clause of the Statute, if the mother of the bastard child marries before an order is made, by which she is charged with the maintenance of the child, she may be committed for disobeying it; because it is for a criminal offence, in disobeying the order of the Justices; and her husband need not be summoned with her. See 1 *Burn's*, 255.

The Justices have authority to commit a soldier in actual service, for disobeying an order of bastardy, for he is not protected against such commitment by the Mutiny Act. *Rex vs. Archer*, 2 T. R. 270. 1 *Burn's*, 265.

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Until default shall be made the Justices have no power to commit or to require sureties for performance of the order, or for appearing at the Sessions. 1 *Burn's*, 258. But as has been seen in the second clause of the Provincial Statute already cited, the Justices are authorised in and by the Order of Filiation, to require the reputed father or mother to find sufficient security that the child shall not become chargeable to any place in the Province. This security, it would seem, should be by recognizance, according to the form No. 10, hereafter given.

No Commitment, &c. until default of obeying order

FORM OF AN ORDER OF FILIATION AND MAINTENANCE.

To the Overseers of the Poor of the township of ———,
County of } The Order of A— M— and A— R—,
Esquires, two of His Majesty's Justices of
the Peace, in and for the said County, made the ——— day of
———, in the year one thousand eight hundred and ———, concerning a (fe)male bastard child, lately born in the township of ———, in the said County, of the body of A— S—, single woman.

Whereas it hath been duly made to appear unto us the said Justices, as well upon the complaint of the Overseers of the poor of the said township of ———, as upon the oath of the said A— S—, that she the said A— S—, on the ——— day of ——— last past, was delivered of a (fe)male bastard child, at ———, in the township of ———, in the said County; and that the said bastard child is now chargeable to the said township of ———, and likely so to continue; and further, that A— F— of ——— in the said County, yeoman, did beget the said bastard child on the body of her the said A— S—. And whereas the said A— F— has appeared before us, in pursuance of our summons for that purpose, but has not shewn any sufficient cause why he the said A— F— shall not be the reputed father of the said bastard child, [or,—And whereas it has been duly proved to us upon oath, that the said A— F— has been duly summoned to appear before us the said Justices, to the end that we might examine into the cause and circumstances of the premises; and whereas the said A— F— has neglected to appear before us, according to the said summons;] We therefore upon examination of the cause and circumstances of the premises, as well upon the oath of the said A— S— as otherwise, do hereby adjudge him the said A— F— to be the reputed father of the said bastard child.

And thereupon we do order, as well for the better relief of the said township of ———, as for the sustentation and relief of the said bastard child, that the said A— F—, shall and do

forthwith, upon notice of this our order, pay or cause to be paid, to the said Overseers of the poor of the said township of —, or to some or one of them, the sum of —, for and towards the reasonable charges and expences incident to the said birth, and for and towards the maintenance of the said bastard child, to the time of making this our order. And we do also hereby further order, that the said A— F— shall likewise pay or cause to be paid, to the Overseers of the poor of the said township of — for the time being, or to one or some of them, the sum of — weekly, and every week, from the present time, for and towards the keeping, sustentation, and maintenance of the said bastard child, for and during so long a time as the said bastard child shall be chargeable to the said township of —. And we do also further order, that the said A— F— shall forthwith find one sufficient surety, and be bound with him to our Lord the King in a recognizance, himself in the sum of — pounds, and the said surety in the sum of — pounds,—conditioned that the said bastard child shall not become burthensome or chargeable to any place in this Province; or else that the said A— F— shall pay into the hands of the Overseers of the poor of the said township, the sum of twenty pounds, for the support of the said bastard child, pursuant to the Statute in such case provided. Given under our hands and seals the day and year first above written.

[Seal.]

A— M—, J. P.

[Seal.]

A— R—, J. P.

The above Order is made against the reputed father, but by the express terms of the Statute, it may be made upon the mother, if the Justices in their discretion see fit to do so, under circumstances; as where the reputed father is absent, or the mother refuses to disclose who is the father, or for other cause.

Directions.

A copy of the order should be left with the Overseers of the poor, and another copy, as a notice, should be given to the party on whom it is made; and if at any time after, such party shall fail in complying with the same, the Overseers may make information and complaint thereof before any one Justice or more; and cause such party to be summoned to appear before such Justice or Justices, to answer to the premises; and if upon the hearing of the matter it appears that the said party has made such default, then he must forthwith find sufficient security to the satisfaction of the Justice or Justices, by entering into a recognizance with one surety or more, according to the form hereafter given, to observe and perform the said order made by them, or else personally to appear at the next General Sessions, and abide by such order as shall there be

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made; and if no order shall be made at the Sessions, then to abide by the first order. If the party fails to find such security, the Justice, or Justices shall forthwith commit him or her to the common gaol, or house of correction, for six months, as the Statute prescribes.

By the last clause of the aforesaid Statute, it is provided, "that if any person shall think himself wrongfully charged, or if the person charging him, be a woman of ill fame, or a common whore; in such cases upon giving security to abide the judgment of the Court, he may appeal from the order of the Justices to the next Sessions, when the whole cause may be heard and tried by such Court, on the verdict of a jury." *Perpetual.*

Appeal from the order of Filiation.

If therefore the party adjudged in the order to be the reputed father, makes known to the Justices, that he so appeals, they are bound to allow it; and the party must give the security; which should be by entering into a recognizance before the Justices, with one surety or more, in such respective sums as the Justices shall name, and according to the form hereafter given.

Directions.

At or before the next Sessions, the Justices must deliver in to the Clerk of the Peace, the said order made by them, together with a record of such recognizance, on appeal, or a minute thereof; and all other papers in their hands relating to the matter.

After such appeal made, and the requisite security given, it would seem, that no proceedings under the order can take place against the reputed father, thereby charged, until after the appeal is determined.

3. *Of the right of the Father or Mother to the custody of the Child.*

WHETHER the Overseers shall have the sole application of the money, and ordering of the child; or the reputed father may take the child from the parish and provide for it himself, hath been doubted, and seems not yet to have been fully settled. In the case of *Newland vs. Osman*, T. 27, G. 2, it was indeed held by the Court, (with the exception of one Judge, who doubted,) that the putative father may take his child and maintain it himself; and that this has always been given as a reason why orders for the maintenance of such children must not be limited to any certain time. 1 *Burn's*, 256.

The mother is entitled to the custody of her illegitimate child, in preference to the father, though he may be better able to educate it. *Id.* 257.

III. OF THE PUNISHMENT OF A WOMAN FOR MAKING A FALSE ACCUSATION CONCERNING BASTARDY.

THE 3d Section of the aforesaid Stat. 32, G. 2, c. 19. 1 V. 28 enacts,—“that in case any woman shall accuse or charge any man with having gotten her with child; though the woman be not with child; or that the child be not really his; but appears to be only a contrivance to defame the person, or cheat him of his money; that in such case, the said woman shall be sent to the house of correction, there to be whipped, and remain for the space of six months.” *Perpetual.*

NOTE. As the Statute does not mention any mode of proceeding against the woman, in order to her conviction for this offence, it may probably seem doubtful, whether under any of the proceedings against the party wrongfully charged, her guilt may be so established, as to authorise her being immediately punished, as the Statute prescribes; or if a criminal prosecution for the offence should take place against her. It is judged, that the latter course is the one to be pursued; and that it should be by indictment; on the trial of which, all the evidence with regard to the offence may directly appear.

IV. MURDERING A BASTARD CHILD.

By § 5 of the 32 G. 2, c. 13. 1 V. 16, it was declared,—“that the mother of a bastard child, concealing its death, should suffer death as in case of murder, unless she could prove by one witness, that the child was born dead.” But the said Section is repealed by the 53 G. 3, c. 11 2 V. 108, by which it is enacted, that “the trials of women charged with the murder of any issue of their bodies, male or female, which being born alive, would by law be bastard, shall thereafter proceed and be governed by such and the like rules of evidence, and of presumption, as are by law used and allowed to take place in other trials of murder; and as if the said Section of the said Act had never been made. Provided always, that it shall and may be lawful for the Jury by whose verdict any prisoner charged with such murder as aforesaid shall be acquitted, to find, in case it shall so appear in evidence, that the prisoner was delivered of issue of her body, male or female, which if born alive, would have been bastard; and that she did by secret burying, or otherwise, endeavour to conceal the birth thereof;—and thereupon, it shall be lawful for the Court before which such prisoner shall have been tried, to adjudge that the said prisoner shall be committed to the common gaol, or

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house of correction, for any time not exceeding two years.
Perpetual.

This last mentioned Statute, extends to all cases of concealment of the birth; whether the child be born alive or otherwise. See 1 Burn's, 268.

No. 1.

VOLUNTARY EXAMINATION OF A WOMAN WITH CHILD OF A BASTARD.

County of } THE Voluntary examination of A— S— of
 } — in the said County, single woman, taken
upon oath, before me A— M— one of His Majesty's Justices
of the Peace in and for the said County, the — day of —
in the year of our Lord —

Who on her oath declares, that she is now with child;
and that such child is likely to be born a bastard; and to be
chargeable to the township of — in the said County, and
that A— F— of — in the said county, labourer, did get her
with child.

Taken and signed the day and year }
above written, before me, } A— S—
A— M—, J. P. }

No. 2.

EXAMINATION AFTER THE BIRTH.

County of } THE examination of A— S— of — in the
 } said county, single woman, taken upon oath before
me A— M—, one of His Majesty's Justices of the Peace in
and for the said county, this — day of, in the year of our
Lord —:

Who saith, that on the — day of — now last past, at
— in the township of —, in the county aforesaid, the said
A. S. was delivered of a (male) bastard child; and that the
said bastard child is likely to become chargeable to the said
township of —, and that A— F— of — in the said county,
labourer, did get her with child of the said bastard child.

Taken and signed the day and year }
above written, before me, } A— S—
A. M., J. Peace. }

BASTARDS.

No. 3.

WARRANT FOR APPREHENDING THE REPUTED FATHER,
BEFORE THE BIRTH.

County of } To each and every of the Constables of the
 } Township of — in the said County.

[Seal.]

WHEREAS A— S— of — in the said County, single woman, hath by her voluntary examination, taken in writing upon oath before me A— M— one of His Majesty's Justices of the Peace, in and for the said county, this present day declared herself to be with child; and that the said child is likely to be born a bastard; and to be chargeable to the township of — in the said county; and that A— F— of — in the said county, labourer, did get her with child: And whereas O— P— one of the Overseers of the poor of the said township of —, in order to indemnify the said township in the premises, hath applied to me, to issue out my warrant for the apprehending of the said A— F—, I do therefore hereby command you, immediately to apprehend the said A— F—, and to bring him before me, or some other of His Majesty's Justices of the Peace, for the said county, to find security to indemnify the said township of — from the supporting of such bastard child; and to enter into recognizance with sufficient security for his appearance at the next General Sessions in the said County, to be there dealt with according to law. Given under my hand and seal, the — day of — in the year of our Lord,
 A— M—, J. Peace.

No. 4.

THE LIKE AFTER THE BIRTH.

County of } To each and every of the Constables of the
 } township of —, in the said County.

[Seal.]

WHEREAS A— S— of — in the said county, single woman, hath by her examination taken in writing, upon oath before me A— M—, one of His Majesty's Justices of the Peace in and for the said county, declared, that on the — day of — now last past, at — in the township of — in the county aforesaid, she the said A— S— was delivered of a (male) bastard child; and that the said bastard child, is likely to become chargeable, (or is actually chargeable) to the said township of — and hath charged A— F— of — in the

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said county, labourer, with having gotten her with child of the said bastard child; and whereas O— P— one of the Overseers of the poor of the township of — aforesaid, in order to indemnify the said township in the premises, hath applied to me, to issue my warrant for the apprehension of the said A— F—; I do therefore hereby command you, immediately to apprehend the said A— F— and to bring him before me, or some other of His Majesty's Justices of the peace for the said county, to find security to indemnify the said township of — from the supporting of such bastard child; and to enter into a recognizance with sufficient security for his appearance at the next General Sessions in the said county, to be there dealt with according to law. Given under my hand and seal, the — day of — in the year of our Lord,

A— M—, J. Peace.

No. 5.

COMMITMENT THEREUPON.

County of } To A— B— one of the Constables of the
 } township of — in the said county.
 [Seal.] WHEREAS A. S. of — in the said county, single
 woman, in her voluntary examination, taken in writing upon
 oath the — day of —, in the year of our Lord one thou-
 sand eight hundred and —, before me A— M—, one of His
 Majesty's Justices of the Peace in and for the said county,
 hath declared herself to be with child; and that the said child
 is likely to be born a bastard, and to be chargeable to the said
 township of —, and hath charged A— F— of — in the
 said county, labourer, with having gotten her with child of the
 said child, [or if it is after the birth then say: Whereas A—
 S— of —, single woman, in her examination, taken in writ-
 ing upon oath before me A— M—, one of his Majesty's Jus-
 tices of the Peace in and for the said county, hath declared
 that on the — day of —, in the year of our Lord —
 at — in the township of —, in the county aforesaid, she
 the said A— S— was delivered of a (male) bastard child; and
 that the said bastard child, is likely to become chargeable to
 the said township of —, and hath charged A— F— of —
 in the said county, labourer, with having gotten her with child
 of the said bastard child;] And whereas the said A— F—
 being now personally present before me, being brought by my
 warrant, upon application for that purpose to me made, by O—
 P—, one of the Overseers of the poor of the said township,
 hath refused to give security to indemnify the said township;

and hath also refused to enter into a recognizance with sufficient security, upon condition to appear at the next General Sessions of the Peace to be holden for the said County; contrary to the Statute in such case provided. These are therefore to command you the said Constable, to take and convey the said A— F— to the common gaol at—, in the said county, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the said keeper of the said common gaol, to receive the said A— F— into your custody in the said common gaol, and him there safely to keep, until he shall give such security, and enter into such recognizance as aforesaid; or be otherwise lawfully delivered from thence. Given under my hand and seal at —, the — day of — in the year of our Lord,

A— M—, J. Peace.

No. 6.

BOND TO INDEMNIFY THE TOWNSHIP.

Know all men by these Presents, that we A— F—, of the township of — in the county of —, labourer, and B— C— and D— E— of the township of — in the said county, yeomen, are held and firmly bound unto O— P— and R— S—, Overseers of the poor of the said township of — in the said county, (In trust for the inhabitants of the said township of —), in — pounds of lawful money of the Province of Nova Scotia, to be paid to the said O— P— and R— S—, or their certain Attorney, their Executors, Administrators, or Assigns. To which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each and every of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the — day of —, in the year of our Lord one thousand eight hundred and —.

The condition of this obligation is such, that whereas A— S— of the township of — in the county aforesaid, single woman, hath in and by her voluntary examination, taken in writing and upon oath before A— M—, Esquire, one of His Majesty's Justices of the Peace in and for the said county of —, declared that she is with child, and that the said child is likely to be born a bastard; and to be chargeable to the said township of —; and that the above bounden A— F— did get her with child; (If it is after the birth, then say, instead of the foregoing. The condition of this obligation is such, that whereas A— S—, of the township of — in the county aforesaid, single woman,

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In her examination taken in writing upon oath before A— M—, Esquire, one of His Majesty's Justices of the Peace in and for the said county, hath declared, that on the — day of — now last past, at — in the said township of —, in the county aforesaid, she the said A— S— was delivered of a (male) bastard child; and that the said bastard child is likely to become chargeable to the said township of —, and hath charged the above bound A— F— with having gotten her with child of the said bastard child.] If therefore the said A— F— B— C— and D— E—, or any, or either of them, their, or any or either of their heirs, executors or administrators, do and shall, from time to time, and at all times hereafter, fully and clearly indemnify and save harmless, as well the above named Overseers of the poor of the said township of —, and their successors for the time being, as also, all and singular the other inhabitants of the said township of —, which now are, or hereafter shall be, for the time being, of and from all manner of costs, taxes, rates, assessments, and charges whatsoever, for or by reason of the birth, education and maintenance of the said child; and of and from all actions, suits, troubles, and other charges and demands whatsoever, touching or concerning the same, then this present obligation to be void; otherwise of force.

Signed, sealed and delivered }	A— F—.	[Seal.]
in the presence of }	B— C—.	[Seal.]
A— W—.	D— E—.	[Seal.]
B— W—.		

No. 7.

RECOGNIZANCE FOR THE REPUTED FATHER TO APPEAR AT THE NEXT SESSIONS, PURSUANT TO THE STAT. 32. G. 2. c. 19. § 1. 1 Vol. 28.

County of) BE IT REMEMBERED, that on the — day of — of — in the year of our Lord one thousand eight hundred and —, A— F— of the township of — in the county aforesaid, labourer, and A— B— of — in the county aforesaid, yeoman, personally came before me A— M—, Esquire, one of His Majesty's Justices of the Peace for the said County of —, and acknowledged themselves to owe to our Lord the King; that is to say, the said A— F— the sum of — pounds, and the said A— B— the sum of — pounds, of lawful money of the Province of Nova Scotia, to be made and levied of their goods and chat-

tels, lands and tenements, respectively, to the use of our said Lord the King, his heirs and successors, if the said A--- F--- shall make default in the condition under written.

Whereas A--- S--- of the township of --- in the county of ---, single woman, hath in and by her voluntary examination, taken in writing, and upon oath, before A--- M--- one of His Majesty's Justices of the Peace, in and for the said county of ---, declared that she is with child, and that the said child is likely to be born a bastard; and to be chargeable to the said township of ---, and that the above bounden A--- F--- did get her with child: The condition of this recognizance is such, that if the above bounden A--- F--- do and shall appear at the next General Sessions of the Peace, to be holden in and for the said county, and shall abide and perform such order or determination in the said premises, as shall be then and there made in pursuance of the Statute of this Province, passed in the 32d year of the reign of His Majesty King George the Second, concerning bastard children; then this recognizance to be void; otherwise of force.

Acknowledged before me, A--- M---, J. P.

[If it is after the birth, then say, Whereas A. S. of the township of ---, in the said county, single woman, in and by her examination, taken in writing upon oath, before me A. M., one of His Majesty's Justices of the Peace in and for the said county, hath declared, that on the --- day of ---, in the year of our Lord one thousand eight hundred and ---, at --- in the township of --- in the county aforesaid, she the said A--- S--- was delivered of a (male) bastard child; and that the said bastard child is likely to become chargeable to the said township of ---; and hath charged the above bound A--- F--- with having gotten her with child of the said bastard child. The condition of this recognizance is such, that if the above bound A. F. do and shall appear at the next General Sessions of the Peace to be holden in and for the said county, and shall abide and perform such order or determination in the said premises, as shall be then and there made, in pursuance of the Statute of this Province passed in the 32d year of the reign of His Majesty King George the Second, concerning bastard children; then this recognizance to be void; otherwise of force.

Acknowledged before me,

A. M., J. Peace.

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No. 8.

Warrant of two Justices, against the Mother, with a Summons for the reputed Father, to make the Order of Filiation and Maintenance ; pursuant to 2nd Sec. of the 32 G. 2, c. 19.

County of } To A. B. one of the Constables of the
} township of —, in the said County,

[Seal.]

[Seal.]

WHEREAS information hath been made unto us A. M., and A. R., two of His Majesty's Justices of the Peace in and for the said county, and both of us residing near the place where the bastard child hereinafter mentioned was born, as well upon the complaint of the Overseers of the poor of the said township; [or if complaint is by a householder then say, — as well upon the complaint of G. H. a substantial householder,] as on the oath of A. S. of —, in the said county, single woman, that on the — day of —, in the year of our Lord one thousand eight hundred and —, she the said A. S. was delivered of a (male) bastard child, at —, in the said township of —, and that A. F. in the township of — in the said county, tailor, is the father of the said bastard child; and that the said bastard child is now living and chargeable, (or likely to become chargeable) to the said township of —: These are therefore to command you to bring the said A. S. before us at the house of —, in — in the said county, on the — day of —, at the hour of — in the forenoon of the same day, to be by us further examined touching the premises; and that you give notice thereof unto the said A. F. that he may likewise be at the time and place aforesaid to make his lawful defence: To the end that upon the examination of the cause and circumstances, we may take such order therein as to right doth appertain. And what you shall do in the execution hereof, you are to make known unto us, at the time and place aforesaid. Given under our hands and seals the — day of — in the year of our Lord—

A. M., J. P.

A. R., J. P.

No. 9.

Warrant of two Justices against the Mother, for the purpose of making the Order of Filiation and Maintenance, where she has not declared on Oath who is the Father.

County of } To A. B. one of the Constables of the town-
ship of — in the said County.

[Seal.]

[Seal.]

WHEREAS information hath been made unto us A. M. and A. R., two of His Majesty's Justices of the Peace in and for the said county, and both of us residing near the place where the bastard child hereinafter mentioned was born, upon the complaint of the Overseers of the poor of the said township of —, [or, if by a household, say, upon the complaint of G. H. a substantial householder,] that on or about the — day of —, in the year of our Lord one thousand eight hundred and —, A. S. of — in the said county, single woman, was delivered of a (male) bastard child, at — in the said township of —, and that the said bastard child is now living, and chargeable, or likely to become chargeable to the said township of —: These are therefore to command you to bring the said A. S. before us at the house of — in —, in the said county, on the — day of —, at the hour of — in the forenoon of the same day, to be by us examined touching the premises; to the end that upon examination of the cause and circumstances, we may take such order therein, as to right doth appertain. And what you shall do in the execution hereof, you are to make known unto us, at the time and place aforesaid. Given under our hands and seals, at — the — day of —, in the year of our Lord one thousand eight hundred and

A. M., J. P.

A. R., J. P.

No. 10.

Recognizance of the reputed Father, that the child shall not become burthensome or chargeable to any Place in the Province, as required in the Statute, and the Order of Filiation.

County of } BE IT REMEMBERED, that on the — day
of —, in the year of our Lord one thousand
eight hundred and —, A. F. of — in the county aforesaid,
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personally came before us A. M. and A. R. Esquires, two of the Justices of our Lord the King assigned to keep the peace in the said county, and acknowledged themselves to owe to our said Lord the King ; that is to say, the said A. F. the sum of forty pounds, and the said A. S. the sum of twenty pounds, of lawful money of the Province of Nova Scotia, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lord the King, his heirs and successors, if the said A. F. shall make default in the condition under written.

Whereas A. S. of — in the county of —, single woman, was on the — day of —, in the year of our Lord one thousand eight hundred and —, at — in the township of — in the said county, delivered of a male bastard child ; which said bastard child is likely to become chargeable to the said township of — ; And whereas she the said A. S. in and by her examination, taken upon oath before us, hath charged the above bound A. F. with having gotten her with child of the said bastard child ; and whereas we the said Justices on due examination of the cause and circumstances, pursuant to the Statute in such case provided, have by our order, made on the — day of — in the year aforesaid, among other things, adjudged the above bound A. F. to be the reputed father of the said bastard child ; the condition of this recognizance is such, that if the above bound A. F., do and shall hereafter prevent and keep the said bastard child from becoming burthensome or chargeable to any place in the said Province of Nova Scotia, then this recognizance to be void, otherwise of force.

Acknowledged before us,

A. M., J. P.

A. R., J. P.

No. 11.

Recognizance of the reputed Father, where he appeals to the next Sessions against the Order of Filiation.

County of } BE IT REMEMBERED, that on the — day of
 { —, in the year of our Lord one thousand eight
 hundred and —, A. F. of — in the county aforesaid, labourer, and A. B. of —, in the county aforesaid, yeoman, personally came before us A. M. and A. R. Esquires, two of the Justices of our Lord the King assigned to keep the peace in the said county, and acknowledged themselves to owe to our said Lord the King ; that is to say, the said A. F. the sum of forty pounds, and the said A. B. the sum of twenty pounds,

of lawful money of the Province of Nova Scotia, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lord the King, his heirs and successors, if the said A. F. shall make default in the condition underwritten.

Whereas by an order under the hands and seals of us the said Justices, duly made on the — day of — in the year aforesaid, it is adjudged by us the said Justices, that he the said A. F. is the reputed father of a male bastard child, born at — in the said county, on the — day of — in the year one thousand eight hundred and —, of the body of A. S. of — in the said county, single woman; And whereas the said A. F. hath appealed against the said order, to the next General Sessions of the Peace, to be holden in and for the said county, pursuant to the Statute in such case provided: The condition of this recognizance is such, that if the said A. F. shall well and truly abide and perform the judgment of the said Court of General Sessions, in the premises; then this recognizance to be void; otherwise of force.

Acknowledged before us.

A. M., J. P.
A. R., J. P.

No. 12.

Information of the neglect or refusal of the reputed Father or the Mother of a Bastard child, to perform the Order for Maintenance.

County of) THE information and complaint of A. O. one
) of the Overseers of the poor of the township of —
in the said county, made on oath before me A. T. one of His Majesty's Justices of the Peace for the said county, the — day of — in the year of our Lord one thousand eight hundred and —. Who on his oath aforesaid says, that by an order under the hands and seals of A. M. and A. R., two of His Majesty's Justices of the Peace in and for the said county, A. F. of — in the county aforesaid, labourer, is adjudged to be the reputed father of a (male) bastard child, born of the body of A. S., single woman, in the township of — in the said county; and that against the said order no appeal hath been preferred, [or, that the said order was upon appeal confirmed by the Court of General Sessions, held in and for the said county, on the — day of — last.] And that in and by the said order, it is ordered, that the said A. F. shall pay the sum of — for and towards —, and that the said bastard child is now living within the said township of —; and that

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he the said A. F. has had due notice of the said order, and that the sum of — due by the said A. F. under and by the said order, has not yet been paid, and that demand of payment thereof has been made upon the said A. F., but that he the said A. F. has refused to pay the same; whereby the said sum of — is now due and owing from the said A. F. to the Overseers of the poor of the said township of —, on the account aforesaid.

And thereupon, he the said A. O. prays me the said Justice, that the said A. F. may be brought before me the said Justice, to answer the premises; and to make his defence thereto; and that justice may be done in the premises.

Before me, A. T., J. P.

No. 13.

Summons thereon.

County of } To each and every of the Constables of the
} township of — in the said county.

[Seal.]

WHEREAS information and complaint upon oath have been made before me, A. T., one of His Majesty's Justices of the Peace for the said County, by A. O. one of the Overseers of the poor of the township of — in the said county, that by an order under the hands and seals of A. M. and A. R., two of His Majesty's Justices of the Peace in and for the said county, A. F. of — in the county of —, labourer, is adjudged to be the reputed father of a (male) bastard child, born of the body of A. S., single woman, in the township of —, in the said county of —; and that against the said order no appeal hath been preferred, [or,—and that the said order was upon appeal confirmed by the Court of General Sessions, holden in and for the said county of —, on the — day of — last;] and that in and by the said order, it is ordered, that he the said A. F., shall — [setting out the order;] and further, that the said bastard child is now living within the said township of —; and that the said A. F. has had due notice of the said order; and that the sum of —, due by the said A. F. under and by the said order, has not been paid; and that demand of payment thereof has been made upon the said A. F., but that the said A. F. hath refused to pay the same; whereby the said sum of — is now due and owing from the said A. F. to the Overseers of the poor of the said township of —, on the account aforesaid; And thereupon, he the said A. O., prays me the said Justice, that the said A. F. may be brought before me,

to answer the promises, and to make his defence thereto. Now, I do therefore hereby command you, that immediately, you duly summon, by leaving with him a copy of this my order, the said A. F., to appear before me the said Justice, at — in the township of — in the said county, on the — day of — next, at the hour of — in the forenoon, to answer the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord one thousand eight hundred and —,

A. T., J. P.

No. 14.

Recognizance of the reputed Father or the Mother, for performance of the Order of Maintenance, or for appearance at the next General Sessions; and to abide by the Order which may be there made; on judgment being given against the party, on the foregoing Summons.

County of } BE IT REMEMBERED, that on the — day of
 { — in the year of our Lord one thousand eight hundred and —, A. F. of — in the county aforesaid, labourer, and A. B. of — in the county aforesaid, yeoman, personally came before me A. T., one of His Majesty's Justices of the Peace for the said county, and acknowledged themselves to owe to our Sovereign Lord the King; that is to say, the said A. F. the sum of forty pounds, and the said A. B. the sum of twenty pounds of lawful money of the Province of Nova Scotia, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lord the King, his heirs and successors, if the said A. F. shall make default in the condition under written.

Whereas, by an order duly made under the hands and seals of A. M. and A. R., two of His Majesty's Justices of the Peace for the said county, the said A. F. is adjudged to be the reputed father of a (male) bastard child, born of the body of A. S., single woman, in the township of —, in the said county; and it is therein and thereby ordered that the said A. F. shall pay the sum of —, for and towards —. And whereas, on the information and complaint on oath of A. O., one of the Overseers of the poor of the said township of —, the said A. F. has been duly summoned to appear before me, to answer for his not paying the sum of —, due by him upon the said order; and whereas, on the hearing of the said complaint before me, it has been made to appear, that the said

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A. F. had due notice of the said order, and that the sum of — is due under the same, by the said A. F. to the Overseers of the poor of the said township of —, and that payment of the said sum has been duly demanded of the said A. F., but that he has neglected and refused to pay the same; whereby he the said A. F. has failed to observe and perform the said order, of which default, the said A. F. has been duly convicted by and before me: The condition of this recognizance is such, that if the above bounden A. F. do and shall in all things well and truly observe and perform the said order of the said Justices, then this recognizance to be void; otherwise of force.

[Or, if by the option and desire of the party, the condition is for his appearance at the next Sessions, and to abide by the Order which may be there made, then say]—The condition of this recognizance is such, that if the said A. F. shall personally appear at the next General Sessions of the Peace, to be holden for the said county, and shall well and truly abide by and perform such order as shall be there made in that behalf; or if no such order shall be made at the said Sessions, then if the said A. F. shall well and truly abide by and perform the said above mentioned order of the said Justices, then this recognizance to be void; otherwise of force.

Acknowledged before me,

A. T., J. P.

No. 15.

Commitment, where the Party convicted of not complying with the Order for Maintenance, has neglected and refused to give the foregoing Security for the performance of the Order, or for Appearance at the Sessions.

County of } To A. C., one of the Constables of the
 { Township of —, in the said County; and to the
 [Seal.] Keeper of the Common Gaol at —, in the said County.

WHEREAS information and complaint upon oath, have been made before me, A. T., one of His Majesty's Justices of the Peace for the said county, by A. O. one of the Overseers of the poor of the township of — in the said county, that by an order under the hands and seals of A. M. and A. R., two of His Majesty's Justices of the Peace for the said county, A. F. of — in the county of —, labourer, is adjudged to be the reputed father of a (male) bastard child, born of the body of A. S., single woman, in the township of — in the said county of —, and that against the said order, no appeal

hath been preferred. [Or,—and that the said order was upon appeal confirmed by the Court of General Sessions, holden in and for the said county, on the — day of — last.] And that in and by the said order it is ordered, that he the said A. F. shall pay the sum of —, for and towards —; and further that the said bastard child is now living within the said township of —, and that the said A. F. has had due notice of the said order, and that the sum of — due by the said A. F. under and by the said order, has not been paid, and that demand of payment thereof has been made upon the said A. F., but that he hath refused to pay the same; whereby the said sum of — is now due and owing from the said A. F. to the Overseers of the Poor of the said township of —, on the account aforesaid; and thereupon he the said A. O. hath prayed me that the said A. F. might be brought before me, to answer the premises, and to make his defence thereto: and whereas the said A. F. having been thereupon duly summoned, now appears before me the said Justice, [or, doth not appear before me,] to answer unto the said complaint, and to be further dealt with according to law; and it appeareth unto me the said Justice, as well on the oath of the said A. O., as otherwise, that the said sum of —, is now due and owing from the said A. F. to the Overseers of the poor of the said township of —, on the account aforesaid. But the said A. F., being called upon by me the said Justice, to show cause why the said sum is so unpaid, doth not shew to me any reasonable or sufficient cause for the same, I the said Justice do therefore order and adjudge, that he the said A. F. is guilty of the offence aforesaid. And whereas the said A. F. has neglected and refused to give security to perform the said order, or for his personal appearance at the next General Sessions for the said county, and to abide by such order as might be there made in that behalf, pursuant to the Statute in such case provided; I the said Justice, do therefore hereby further order and adjudge, that for his offence aforesaid, of not paying the said sum of — due under and by the said order, he the said A. F. be committed, and he is accordingly by me, hereby committed to the common gaol of the said County at —, to be there detained in custody for the space of six months; or until he the said A. F. shall give the said security touching the said order, pursuant to the said Statute; or shall be thence delivered by due course of law. And I do hereby charge and command you the said Constable, forthwith to take and convey the said A. F. to the said common gaol of the said county, at —, and there deliver him to the keeper thereof, together with this precept. And I do also hereby command you the

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said keeper of the said common gaol, to receive the said A. F. into your custody, in the said gaol, and him there safely to keep and detain, for the space of six months ; or until he shall give the said security, pursuant to the Statute aforesaid ; or shall be thence delivered by due course of law. Given under my hand and seal, the — day of — one thousand eight hundred and —
A. T., J. P.

NOTE,—By the Provincial Act already cited, which is similar to the English Statute, of the 18 Eliz. c 3, the payment of money due upon an Order of Maintenance cannot be immediately enforced against the party by whom it has been adjudged to be due ; but he can only be required to give security for the performance of the order, or for his appearance at the Sessions, and to abide by any order which may be there made ; or in default of giving such security, may be committed to gaol or the house of correction, for six months. This defect in the said English Statute, as to immediately enforcing the payment of the money due under an order, has been remedied by the 49 G. 3, c. 68, and it is highly expedient, to avoid delay and expense, that a similar amendment should be enacted in this Province.

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BATTERY, see ASSAULT AND BATTERY.

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BEEF AND PORK.

I. WEIGHING OF BEEF.

By the 10 G. 4, c. 17. 4 V. 47. “ The Grand Jury for each county, at the first General Sessions, annually, shall nominate five or more persons in each township, out of whom the Court shall appoint two or more, to inspect and weigh, beef, sold to any butcher at a stated price, by the pound or hundred weight, and slaughtered by him, within the township where sold. And by Sec. 4, any butcher who shall not employ one of such Inspectors, to inspect and weigh the beef of all cattle purchased and slaughtered by him, as aforesaid, shall forfeit for every head of such cattle, twenty shillings, to be recovered before one Justice ; one half of such penalty to go to the party prosecuting, and the other half to the poor of the township where the penalty is recovered. *Temporary Act.*

When information of an offence against this Statute is given before the Justice, he must issue a Summons against the party charged, to appear before him, in at least three days after, and answer the charge; and if he be convicted, a warrant of distress for the penalty may issue. For the forms, see respectively, Titles,—Information, Summons, and Distress.

II. INSPECTION OF BEEF AND PORK FOR EXPORTATION.

By the 11 G. 4, c. 6. 4 V. 76, "The Grand Jury annually, at the General Sessions, when the town officers are appointed, shall nominate four persons in each township, out of whom the Court shall appoint two, to be Inspectors and re-packers of beef and pork intended for exportation." By Sec. 12.—On Inspector stating on oath, before any Justice, his suspicion that any beef or pork not inspected, is shipped on board any vessel for exportation, assigning the causes of his suspicion, the Justice if he thinks the suspicion well founded, shall issue his warrant to such Inspector, to enter on board such vessel, and to make search for such beef or pork; and if any such shall be found, the Justice, on application by such Inspector, shall issue his warrant directed to the Sheriff, his deputy, or any constable, to enter on board such vessel, and to cause such beef or pork to be re-landed, and delivered to the owner thereof, upon his paying all reasonable and lawful expences for the said warrant, search, and re-landing. Every person obstructing the Inspector in making such search, or in re-landing such beef or pork, shall forfeit fifty pounds; to be recovered on the oath of the Inspector, and to be paid to the Overseers of the poor of the township where the offence was committed." *Perpetual.*

No. 1.

Form of Affidavit of Inspector under the above Statute, stating his suspicion that Beef or Pork is shipped without being inspected.

County of) Personally appeared before me A. M., one
) of His Majesty's Justices of the Peace for the said
 county of —, A. I. of the township of —, in the said
 county, one of the Inspectors for the said township, of salted
 beef and pork intended for exportation; who being by me
 duly sworn, on this — day of —, in the year of our Lord
 one thousand eight hundred and —, deposeth and saith, that,
 &c. [here state the fact of the offence of shipment, without in-

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specation, or the causes of suspicion that the offence has been committed.)

A. I.

Sworn before me,
A. M., J. P.

No. 2.

Warrant on the foregoing Affidavit.

County of } To A. I. one of the Inspectors for the town-
ship of — in the said county, for the inspection
[Seal.] of salted beef and pork, intended for exportation.

WHEREAS on the — day of —, in the year of our Lord one thousand eight hundred and —, information and complaint on oath have been made before me A. M., one of His Majesty's Justices of the Peace for the said county, by you the said A. I., stating that, — [here recite the fact of the offence, or causes of suspicion as stated in the affidavit;] These are therefore in the name of our Lord the King, to authorise and require you the said A. I., with necessary and proper assistants, to enter in the day time, on board of the said vessel, called the —, and there diligently to search for, and make discovery of any salted beef or pork shipped on board of the said vessel, for exportation out of this Province; and if any of the same shall be found upon such search, that you make it known to me, together with your doings hereon, that I may further cause to be done thereupon, what is by law required in that behalf. Given under my hand and seal, at — in the said county, the — day of —, in the year of our Lord 183 .

A. M., J. P.

No. 3.

Warrant for entering a Vessel having on board Uninspected Beef or Pork for exportation, and causing the same to be re-landed.

County of } To the Sheriff of the said county of —, or
his deputy; (or to E. C., one of the Constables of the township of — in the said county, and to each and every other of the Constables in and throughout the said county respectively.)

[Seal.]

WHEREAS it has been made to appear to me A. M., one of His Majesty's Justices of the Peace for the said county, on the information of A. I., one of the Inspectors for the said



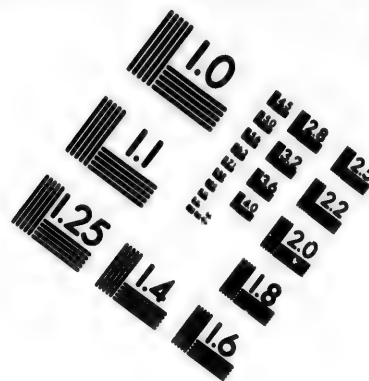
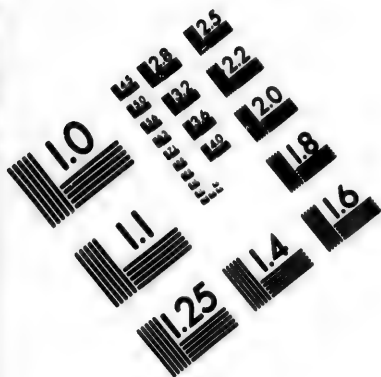
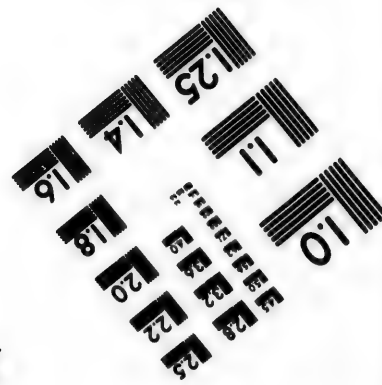
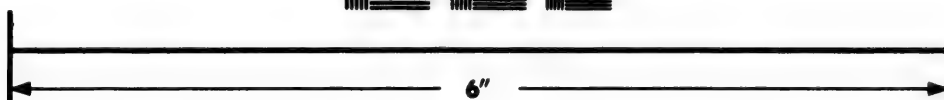
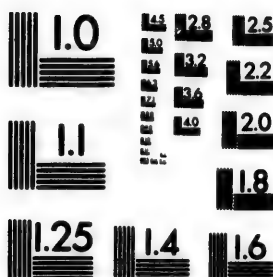


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township, of salted beef and pork intended for exportation from this Province, under and by virtue of a search warrant, directed by me to the said A. I., that — barrels of salted beef, which have not been inspected as by law provided and directed, are now on board of the ship or vessel, called the —, now lying in the port of — in the said County, and whereof E. M. is Master, and which beef is shipped on board of the said vessel for exportation from this Province, contrary to the Statute in such case provided; These are therefore to authorise and require you, with necessary and proper assistants, forthwith to enter on board of the said vessel, and to cause the said — barrels of uninspected beef to be re-landed from the said vessel, and to be delivered to the owner or owners thereof, upon his or their paying all reasonable and lawful expenses of the aforesaid search warrant, directed by me to the said A. I., and also all reasonable and lawful expenses of making the said search, and of the re-landing of the said barrels of beef as herein commanded. Herein fail not. Given under my hand and seal at — in the said county, the — day of —, in the year of our Lord —

A. M., J. P.

BILLETING.

By the 35 G. 3, c. 4. 1 V. 350, Any one Justice, inhabiting in or near any town or place, may quarter and billet the officers and soldiers in His Majesty's service, when marching from one district to another, in inns, taverns, and alehouses; and where there shall not be found room in such houses, then in the houses of persons selling spirituous liquors by retail; on the officer or non-commissioned officer commanding the regiment, or detachment, producing to such Justice, the order of the officer commanding His Majesty's forces within this Province, directing such march; and if any such person to whom any such billet is directed and presented, shall refuse to quarter and billet the officers and soldiers, he is therein directed to receive, he shall forfeit five pounds for each offence, to be recovered in any Court of Record. *Perpetual.*

By the 48 G. 3, c. 2. 2 V. 44, Whenever any regiment or detachment of His Majesty's forces, or of the militia, shall be ordered to march from one district of the Province to another, it shall be lawful for the Justices of the Peace inhabiting in or near any town or place, at or through which such forces shall arrive, or pass, to quarter and billet the officers and sol-

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diers of such forces, in inns, taverns, and alehouses ; and where there shall not be sufficient room therein, then to quarter the remainder of them, in the houses of persons selling spirituous liquors by retail, and of those who have within one month previous to the marching of such forces, kept an inn, tavern, or alehouse. And by § 4, In places where there may not be a sufficient number of public inns, taverns, and licensed shops, whereon to billet the whole of any detachment of soldiers or militia that may be on their march, it shall be lawful to billet a part of such detachment, on other housekeepers, in the discretion of the magistrates giving billets for the same.

Sec. 5 and 6. Any two Justices for the county where any march of the regular or of the militia forces is to commence, or for the county through which, or to which, any such march is to be continued, upon the application of the commanding officer of such forces, and a route signed by the Governor or commander-in-chief, shall order a suitable number of horses, carts, and waggons, to be furnished for conveying upon such route, the baggage of such forces ; and shall also determine what persons shall provide the same. If any person shall refuse or neglect to furnish such horses, carts, or waggons, upon any such order of two Justices, without a reasonable excuse to be allowed by them, on complaint by such Justices or either of them, to the next Court of General Sessions for the County, the Court shall order the party complained of, to be brought before them, and shall hear and determine such complaint ; and if such party shall be convicted of wilfully disobeying such order, he shall forfeit and pay forty shillings, to be levied by distress and sale of his goods and chattels, and to be paid to the officer commanding the militia of the county, to be applied to the services thereafter in the Statute mentioned.

Annual. *edita ante hanc data ad statuta.*

NOTE.—The first Statute above recited, is a perpetual one, and it has never been actually repealed ; but as the latter Statute embraces nearly all the provisions of the first, and also contains many further regulations on the subject, it may probably seem doubtful, whether the first is still in force, or whether it is not virtually repealed, or superseded by the latter. It is to be observed, however, that the two Statutes differ in the following, among other particulars, viz., that the first relates only to the regular forces, and contains a penalty for refusing to quarter troops as directed ; while the latter Statute relates to both descriptions of force, but does not impose any penalty for refusing to receive troops under a billet.

The duty of Justices under the last recited Statute, is so clearly set forth in the Statute itself, that no directions on the subject need here be given.

BILLS AND NOTES.

By the 1 & 2 G. 4, c. 38. 3 V. 115. the issue and circulation of bills, notes, or undertakings, payable to bearer, or otherwise negotiable for a less sum than 20 shillings, (except treasury notes, or notes or engagements between debtor and creditor,) are prohibited, under the penalty of twenty shillings for each such bill, note, or undertaking, so issued or circulated; such penalty to be recovered by any person in a summary way, before two Justices, and to be levied by execution in the usual form; one half of such penalty to be paid to the informer, and the other half to the poor of the town or place in which the offence has been committed. By Sec. 5, the sum due on any such bill, or note, may be recovered by the holder thereof, from the person liable to the payment of the same, by suit in a summary manner before one Justice. *Perpetual.*

Directions.

The form of an Information to recover penalties under the above mentioned Statute, can readily be framed from the general form which will be found under the title,—Information; and as the proceedings for the recovery of such penalties, as well as for the sum due on any such bill, or note, are to be in a summary manner, as in cases of debt, the forms of Summons and Execution in both cases, will be similar to those which will be found under the title,—Summary Trials. In the body of the Summons, however, it should be stated, for what sum, and on what account the party is sued. The person who informed and sued, cannot be a witness to prove the offence, being entitled to a part of the penalty.

Forging or Counterfeiting certain Bills or Notes.

By the 4 Will. 4, c. 24. 4 V. 274, "Any person who shall forge or counterfeit any such bank bill, or note, as may be issued under the Statute, or who shall alter the same, so that it shall appear to be of greater value than when originally issued; or who shall knowingly offer, or pass in payment, any such forged counterfeited or altered bank bill, or note, shall be adjudged guilty of a misdemeanor; and shall be imprisoned for a term not exceeding seven years, in the Bridewell, and be there kept at hard labour; and shall pay all charges of prosecution." By Sec. 10, stealing, or attempting to steal any such bank bill, or note, is declared to be the same offence as stealing, or attempting to steal money to the same amount as is expressed on the face of such bill or note. *Perpetual.*

Stealing.

The informations taken by the Justice under this last mentioned Statute, must be upon oath. For directions as to the course of proceeding on any such information, and for the forms, see respectively titles,—Information, Warrant, Exami-

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nation, Bail, and Commitment, also titles Forgery and Larceny.

BISCUIT, See BREAD.

BLASPHEMY AND PROFANENESS.

By the 32 G. 2. c. 20. 1 V. 28, persons who shall wilfully blaspheme the Holy Name of God, or deny, curse, or reproach the true God, his creation or government of the world; or deny, curse, or reproach the canonical Scriptures, in the books of the Old and New Testament, shall, on conviction at the Court of Assize or Sessions of the Peace, be set twice in the pillory, for one hour each time; or be imprisoned for three months at the discretion of the Court. *Perpetual.*

BREAD.

By the 3 G. 3. c. 3. 1 V. 87, flour, biscuit, and ship bread shall be sold, bartered or exchanged, only by weight; and every person who shall sell, barter, or exchange the same in any other manner, shall forfeit the article, and shall also forfeit the sum of twenty shillings for every hundred weight, and so in proportion for a less quantity of the same which has been so sold, bartered or exchanged: such penalty, with costs of prosecution, to be recovered on the oath of one witness before any two Justices for the county. The article forfeited shall be applied to the use of the poor of the town or place, where the offence was committed, and the penalty recovered shall go to the person who informed and sued for the same. Provided that all prosecutions shall be commenced within ten days after the offence was committed. *Perpetual.*

Flour and Bread to be sold by weight only.

NOTE. If the penalty adjudged is not paid on conviction, it is conceived that neither a warrant of distress against the goods of the offender, nor any process against his body can be issued, as no final process of any kind is directed or authorized by the Statute.

By the 36 G. 3. c. 8, 1 V. 371, made perpetual by 48 G. 3. c. 22. 2 V. 22, "General or Special Sessions may set the assize of bread, made and offered for sale, in the

Assize of Bread.

manner prescribed in the Statute ; and in any place where such assize is established, no person shall make for sale, or sell, or expose for sale, any sort of bread, other than wheaten bread, and such other sorts of bread as in such place shall by the Court be publicly allowed to be made or sold, under a penalty of not more than twenty shillings, nor less than five shillings, to be recovered before any Justice or Justices.

Sec. 8, 9. When the Justices in Sessions shall order and allow bread to be made for sale, mixed of different kinds of flour or meal, the bakers shall conform to the regulations made and published by such Justices, under a penalty not exceeding twenty shillings, nor less than five shillings, in the discretion of the Justice before whom the party shall be convicted.

Quality.

Sec. 10. Bread for sale, shall be well made, without any damaged or musty ingredients ; on pain, that every person, (other than a journeyman or servant) who shall offend, shall, on conviction before one Justice, forfeit not more than three pounds, nor less than forty shillings ; or be committed to the house of correction, or the county jail, and be there kept at hard labour, for not less than seven days, nor more than fourteen days, at the discretion of the Justice. And every journeyman and servant, knowingly offending therein, shall, on the like conviction, forfeit not more than forty shillings, nor less than twenty shillings ; or be committed as aforesaid. And the Justice before whom any offender shall be convicted, shall, out of the money forfeited, cause the offender's name and offence to be published in some newspaper.

Deficiency in weight.

Sec. 11. Persons making, selling, or offering for sale bread of less weight than the assize established, on conviction shall forfeit not more than five shillings, nor less than one shilling, for every ounce deficient in a loaf ; and for any deficiency less than an ounce, not less than six pence, nor more than two shillings and six pence, according as any Justice before whom any such deficient bread shall be brought, shall see fit to order ; so as such bread be weighed before such Justice, within twenty-four hours after it was baked, or sold, or exposed for sale ; unless the party against whom the complaint has been made, can make out to the satisfaction of the Justice, that the deficiency arose wholly from some unavoidable accident in baking, or otherwise, or was occasioned by some accident, contrivance, or confederacy.

Marking Bread

Sec. 12. Bread for sale, shall be marked with the initial letters of the baker's name, and of the quality of the flour, under a penalty of not less than five shillings, nor more than twenty shillings, in the discretion of the Justice before whom the offender shall be convicted.

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Sec. 13 & 14. Clerks of the Market, Justices of the Peace, or Constables, authorised by warrant of a Justice, may, in the day time, enter any house, shop, or other place belonging to any baker or seller of bread, and search for, weigh, and try any bread; and if any of the same on trial by such Justice, or Clerk of the Market, or on proof by one credible witness, before any Justice, shall be found deficient in weight, or not truly marked, or deficient in due working or baking, or in the goodness of the stuff, or mixed with improper or undue proportions of flour or meal, or with any ingredients not allowed by the Act, such bread may be seized and disposed of to poor persons, as the Justice may see fit; and any person obstructing such search or seizure, shall forfeit not less than twenty, nor more than forty shillings. Provided, that if any baker shall make it appear to the Justice, that the offence for which he paid the penalty, was occasioned by his journeyman, or servant, the Justice shall issue his warrant to bring such offender before him, and on being convicted, the Justice shall order what sum he shall pay, by way of recompense; and on his failing to pay the same, the Justice shall commit him to the house of correction, or other prison, there to be kept to hard labour, for any time not exceeding one month, unless payment be sooner made.

Searching for
defective
Bread.

Sec. 17. One Justice, or more, may hear and determine in a summary way, offences against the true intent of the Act; and for that purpose, may summon the party accused, and on his not appearing, or offering sufficient excuse therefor, may on affidavit of offence, issue a warrant to apprehend him, and whether he is arrested or not, the Justice may proceed to examine witnesses as to the offence, and either convict or acquit; and on conviction of the party, if the money forfeited shall not be paid within twenty-four hours after conviction, the Justice shall issue a warrant of distress against his goods and chattels; and if within five days after levying thereof, the money forfeited shall not be paid, the goods seized shall be appraised and sold; and out of the proceeds, the penalty, and all charges shall be deducted, rendering any overplus to the owner; and for want of distress, the party convicted shall be committed to the county gaol, or house of correction, for not less than seven days, nor more than twenty-one days, unless the penalty and charges shall be paid, before the expiration of the term of commitment, half of such penalties to go to the informer, and the other half to be paid by the Justice, into the Sessions, to be there disposed of, for better carrying the Act into execution.

Hearing
Offences.

Sec. 19. Justices and others sued for any thing done under authority of the Act, may plead the general issue, and

Pleading.
Costs, and li-
mitation of
Prosecutions.

give the special matter in evidence, and on judgment in their favour, shall have treble costs. No person to be convicted for any offence against the Act, unless the prosecution for the same be commenced within three days after the offence committed. *Perpetual.*

For the Forms required under this Title, see respectively, Titles,—Information ; Summons ; Warrant ; Conviction ; Distress ; Commitment ; the forms under which Titles may be readily altered or filled up, so as to answer.



BRICKS.

By the 32 G. 3, c. 4. 1 V. 292. " All bricks for sale, shall be inspected by the officers appointed for that purpose, and those who shall refuse to accept of the office, or who shall be guilty of any neglect or misbehaviour in the execution of the duties thereof, shall forfeit and pay for the use of the poor in the town wherein they reside, a sum not exceeding three pounds, to be recovered before any two Justices of the Peace for the county."

Size & Quality

The above Statute is repealed as to the size of bricks, by the 56 G. 3, c. 21. 2 V. 209, which enacts, that all bricks made in this Province for sale, or sold therein, shall be of the size and dimensions following, that is to say ; those of the larger size shall be nine inches in length, four inches and three eighths of an inch in width, and two inches and one half in thickness ; and those of the smaller size, shall be eight inches and one quarter in length, four inches in width, and two inches in thickness. And all bricks sold or offered for sale, shall be inspected by one of the officers appointed for that purpose ; and all such bricks of any other or different dimensions than is above provided, shall be seized by the said Inspector, unless their actual size and dimensions shall have been declared by the owner or seller thereof, and he shall have sold or offered them for sale, as and for bricks of such their actual size and dimensions. And all bricks inspected as aforesaid, that shall not be well burnt, or be otherwise good and merchantable, shall be seized by the Inspector, unless the same shall have been sold or offered for sale, as inferior or refuse bricks.

Sec. 4. The Inspector shall receive from the seller, ninepence for every thousand bricks inspected, and so in proportion for any smaller number.

Sec. 5. If the number of bricks seized, do not exceed two thousand, the offender may be convicted before one Jus-

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tice of the Peace, upon the oath of one witness or more ; and upon such conviction, the bricks so seized shall be adjudged forfeited ; and the person convicted, shall be adjudged to pay the costs of prosecution—one half of the forfeiture shall go to the Inspector who made the seizure, for his trouble, and expense of storage and prosecution, and the other half to the use of the poor of the county where the conviction shall take place. *Perpetual.*

For the Forms required, see respectively, Titles,—Information ; Summons ; Conviction.

BRIDEWELL, &c.

By the 33 G. 2, c. 1, § 2. 1 V. 41, (which relates only to the town of Halifax,) it is provided that the Justices of the Peace in their General Sessions, or any one Justice out of Court, may send and commit to the house of correction, to be kept, governed and punished, according to the rules and orders thereof, all disorderly and idle persons, and such as shall be found begging or practising any unlawful games, or pretending to fortune telling, common drunkards, persons of lewd behaviour, vagabonds, runaways, stubborn servants, and children, and persons who notoriously misspend their time, to the neglect and prejudice of their own or their family's support ; upon due conviction of any of the said offences or disorders.

What persons
may be com-
mitted.

By the 32 G. 3, c. 5. 1 V. 293, The Justices of the Peace and Grand Juries of the several counties and districts, in their General Sessions, when they shall think necessary, may provide proper buildings, or appropriate a certain part of the county or district gaol as a work-house or house of correction ; and the Justices in their Sessions, or any one Justice out of Court, may commit thereto all persons of the descriptions mentioned in the above second clause of the above Stat. 33 G. 2, c. 1, which clause is hereby extended to the whole Province. The Justices in Sessions, shall appoint keepers of the said work-houses, and shall nominate three of their bench, to have the inspection of such work-houses, one of whom, in rotation, shall visit the same, at least once in every month, to see that such persons as shall be committed thereto, be kept diligently at work, and to rectify any abuses that may be found in the management thereof, in concurrence with the other Justices ; and such Justice shall report the same without delay to the Justices in their Sessions. The term for which persons shall be committed to such work-houses, shall be until the

Providing
Workhouses,
&c.

meeting of the next General Sessions of the Peace, or until otherwise discharged by law. Provided, however, that it shall be lawful for the Justices appointed as aforesaid, to visit such work-houses, or for any other two Justices of the Peace for the county, at any time to discharge any person committed to the same, if they shall think it fit and proper so to do. *Perpetual.*

**Punishment
for Clergyable
Felonies, &c.**

By the 56 G. 3, c. 6. 1 V. 201, The Court before whom any person shall be convicted of any clergyable felony, larceny, of receiving stolen goods, knowing them to be stolen, or other lesser criminal offence, may sentence the offender to be put and kept to hard labour in the house of correction at Halifax, or elsewhere, or upon the highways or other public works in the Province for any time not exceeding seven years. *Perpetual.*

For general directions as to proceedings under the two first Statutes above recited; and for the Forms required, see Titles,—Information; Warrant; Conviction; Commitment.

BRIDGES.

By the 5 W. 4, c. 13. 4 V. 385, Presentments may be made, and confirmed in the General Sessions, or on neglect of presentments, amercements may be made, for the payment of all such sums of money as may be necessary to be raised, or expenses that may have arisen, for the building or repairing of bridges within the county or district. *Temporary.*

By the common law, counties are chargeable with the repair of public bridges. 1 *Burn's*, 367.

BUGGERY.

By the 32 G. 2, c. 13, § 6. 1 V. 16, "Persons who shall be convicted of the detestable sin of buggery with mankind, or beast, shall suffer death; and Justices of the Peace shall have power to enquire of the offence, as in other felonies. And persons who shall make an assault, with intent to commit this crime, shall be adjudged to the pillory, and may also be fined and imprisoned, or bound in sureties for good behaviour."

The Forms and the proceedings by the Justice, will be the same as in other cases of felony, or of Assault, &c., for

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which see, respectively, Titles,—Information ; Warrant ; Examination ; Bail ; Commitment. Justices cannot discharge a party on bail for the higher offence, but must commit him to prison ; but one Justice may admit to bail a person who is only charged with an Assault, with intent to commit the offence.

— 22 —
BUOYS, see NAVIGATION.

— 23 —
BURGLARY.

BURGLARY is a felony at common law, in breaking and entering the mansion house of another, in the night, with intent to commit some felony, within the same, whether the felonious intent be executed or not. *Hale's Sum.* 79. 1 *Burn's*, 393.

To constitute a breaking, the entrance must be obtained either by fraud, conspiracy, threat or force. If the door of a mansion house stand open, and the thief enter, or if the window of the house be open, and a thief with a hook or other engine draw out some of the goods of the owner, there is no burglary in either case ; because there is no actual breaking of the house. But if the thief breaks the glass of a window, and with a hook, or other engine, draws out some of the goods of the owner, it is burglary. 3 *Inst.* 64. 1 *Burn's*, 394. Breaking.

And Lord Hale says, " These acts amount to an actual breaking ; viz. opening the casement, or breaking the glass window, picking open the lock of a door, or pulling back the lock, or the leaf of a window, or unlatching the door, that is only latched ; so entering by the chimney is a breaking, for it is as much closed as the nature of things will permit." 1 *Burn's*, 394.

If a thief enter a dwelling house in the night, through the outer door being left open, or by an open window, and when within the house, he turn the key, or unlatch a chamber door, with intent to commit a felony, this is burglary. *Id.* 395.

It is deemed an entry, when the thief breaks the house, and his body, or any part thereof, as his foot, or his arm, is within any part of the house. So if one put a gun into a window, which he hath broken, (though the hand be not in,) or into a hole of the house which he hath made, with intent to murder or kill, this is an entry, and breaking of the house ; but if he doth barely break the house without any such entry, this is no burglary. *Id.* 397. Entry.

What Build-
ings Mansion
House in-
cludes.

If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch at a distance, it is burglary in all. *Id.* 399.

The mansion-house not only includes the dwelling house, but also the out-houses, as barn, stable, cow-house, dairy-house, if they be parcel of the messuage, though they are not under the same roof, or joining contiguous to it. *Id.*

It is not necessary to make it burglary, that any person be actually in the house at the very time of the offence committed. *Id.* 400.

What shall be
deemed Night

There can be no burglary in the day time, but only in the night; and therefore if there be daylight enough begun or left, either by the light of the sun, or twilight, whereby the countenance of a person may be reasonably discerned, it is no burglary; but this does not extend to moon light. *Id.* 405.

They are burglars who break any house in the night, although they take nothing away. *Id.* 406.

By the 32 G. 2, c. 13, § 9 & 13. 1 V. 16, If any person or persons shall by night, break open and enter, any dwelling-house, shop, or warehouse, or any vessel lying so near the land, that it be adjudged within the county, with an intent to commit any felony, whether such felonious intent be executed or not; each and every such offender, their aiders and abettors, shall upon due conviction, suffer as felons, without benefit of clergy. *Perpetual.*

Directions.

The Justice before whom a party charged with burglary is brought, must proceed to examine concerning the offence, according to the directions contained under the Title,—Examination; and if the offence is proved, although it does not appear that the party charged is guilty, yet the Justice cannot discharge him, on bail, or otherwise, but must commit him to gaol to take his trial; for which see Title—Commitment.

No. 1.

Form of Information of Burglary.

County of } THE information and complaint of A. I. of
 } —, in the said county of —, yeoman, made
on oath the — day of —, in the year of our Lord one thousand eight hundred and — before me A. M., Esquire, one of His Majesty's Justices of the Peace for the said county.

The said deponent saith, that in the night of the — day of —, in the year aforesaid, the dwelling house of him the said A. I., at — aforesaid, in the county aforesaid, was feloniously and burglariously broken open, and the following articles,

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namely,—six silver spoons of the value of five shillings each, and one silver ladle of the value of one pound, of the goods and chattels of him the said A. I., were feloniously and burglariously stolen, taken, and carried away from thence; and that he hath just cause to suspect, and doth suspect, that A. O., late of — in the county of — labourer, did break into the said dwelling-house, and steal and carry away the said goods.

A. I.

Sworn before me,

A. M., J. P.

No. 2.

Warrant to Apprehend a Burglar.

County of } To each and every of the Constables respec-
tively for the several townships of the said county
[Seal.] of —

FORASMUCH as A. I. of — in the county of — yeoman, hath this day made information and complaint upon oath before me A. M., Esquire, one of His Majesty's Justices of the Peace for the said county, that in the night of the — day of —, in the year aforesaid, the dwelling-house of him the said A. I., at — in the county aforesaid, was feloniously and burglariously broken open, and six silver spoons, of the value of five shillings each, and one silver ladle, of the value of one pound, of the goods and chattels of him the said A. I., were feloniously and burglariously stolen, taken, and carried away from thence; and that he hath just cause to suspect, and doth suspect, that A. O. late of —, in the county of — labourer, did commit the said burglary and felony; These, are therefore in His said Majesty's name, to command you, that immediately upon sight hereof, you do apprehend the said A. O. and bring him before me, to answer the premises, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord one thousand eight hundred and —

A. M., J. P.

For a Form of Commitment, see Title,—Commitment.

BURNING.

MALICIOUSLY and voluntarily burning the house of another, by night or by day, is felony at the common law. 1 *Burn's*, 413.

By the 32 G. 2, c. 13, § 20. 1 V. 17, If any person or persons shall wilfully and maliciously burn or cause to be burned, any dwelling-house, barn, out-house, or warehouse of another, or any public building, or any hovel, cock, mow, rick, or stack of corn, straw, hay, or wood of another, all and every such person or persons so offending, and their aiders, abettors, and counsellors, shall upon due conviction, suffer as felons, and be excluded from the benefit of clergy. *Perpetual*.

Directions.

When a party is brought before a Justice, charged with any offence under the above Statute, the Justice must examine concerning it, according to the directions contained under the Title,—Examination. Justices of the Peace cannot admit such a party to bail, but he must be committed to prison, and the examinations taken, be sent in to the Supreme Court at its next sitting in the county.

Threats of
Burning.

By the Commission of the Peace, any Justice may cause to come before him, all those who to any of the people concerning the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour towards the King and his people; and if they shall refuse to find such security, may cause them to be safely kept in the King's prisons until they shall find security.

For the Forms required in the case of house burning, &c., see Titles,—Information; Warrant; Commitment; the Forms given under which titles respectively, may be readily altered or filled up, so as to answer for this offence. The Forms in the case of threats of burning, will be found under the Title,—Surety for the Good Behaviour.

CARRIAGES.

Rates of Car-
riages, &c.

By the 33 G. 2, c. 11. 1 V. 53, the Justices of the Peace in their General Sessions for the County of Halifax, shall every year in the months of March and September, regulate the fares and rates for the carriage of wood, barrels, hogsheads, and other wares and merchandize in the town of Halifax and its suburbs; and shall cause a table of such rates to be

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posted up in the most public places therein ; and if any carman, or owner of trucks or carts, or other carriage, shall ask, demand, or receive, any other or greater rates than is allowed by such table, he shall forfeit the sum of twenty shillings ; to be recovered on the oath of the Prosecutor, before any Justice of the Peace for that county ; to be levied by warrant of distress. And by Sec. 3. the Justices of the Peace at the Quarter Sessions held in the several other counties, are also empowered and required every year, in the months of March and September, to regulate the fares and rates of Carriages for the several towns in each of the said counties, in like manner, and with the same penalties, and to be recovered as is before directed. One half of the fines and forfeitures shall be paid to the prosecutor, and the other half be applied to and for mending and repairing the streets of the town where the offence was committed. *Perpetual.*

NOTE. As the last clause of the above Act directs the rates of carriages to be established in the Quarter Sessions in the months of March and September, and there are no Sessions held quarterly in any of those counties of the Province to which that clause relates, and as the general half-yearly Sessions in but few places, if any, meet in those months, and as the clause imposes a penalty, and must therefore be construed strictly, there may be a doubt if under these circumstances it can be carried into effect.

By the 4 G. 4, c. 23. 3 V. 166, the following regulations are enacted concerning the driving of carriages.

Rules for Driving Carriages

Sec. 2. Every person who shall hereafter drive any truck, sled, or wheel carriage, used for the carriage of goods within the town of Halifax, or any town within this Province, shall not on any pretence whatever, drive swifter than a slow or easy trot, and shall at all times take care to lead his horse or horses with a halter, or to guide them with proper reins.

Sec. 3. Every person driving any chaise, sleigh, or other carriage whatsoever, within any town in this Province, shall drive the same in a moderate and careful manner.

Sec. 4. Persons driving sleighs or sleds in any of the streets or highways within the Province, shall have affixed to the harness used for the purpose of drawing each such sleigh or sled, at the least two good open bells, or four round bells, such as are commonly used on sleighs.

Sec. 5. All sleds used for the carriage of loads upon any of the roads, shall not be less than four feet wide from outside to outside of the runners.

Sec. 6. It shall not be lawful to drive upon any of the roads, any load of hay or straw of a greater width than twelve

feet; nor shall it be lawful for persons returning with sleds, to suffer pointed stakes to remain standing, or carry frames, or projecting pieces outside of the sled.

Sec. 7. Every person who in summer or winter shall drive any gig, chaise, carriage, waggon, cart, truck, sleigh, or sled, on any street in the town of Halifax, or on any public road or highway, shall always leave the centre of such street or road on his right hand side.

Sec. 8. When the driver of any carriage, sleigh or sled, on any of said streets or public roads, attempts to pass another carriage, sleigh, or sled, having its head in the same direction, such driver shall take care to pass on the right side of such carriage, sleigh or sled, so as to leave a sufficient way open on his left hand, for the carriage, sleigh, or sled, which he is so about to pass; and all carriages, sleighs and sleds, at all times, both in the night and in the day, shall be obliged to keep on the side of the road appointed and established by this Act.

Carriages
stopping, &c.

Sec. 9. Whenever any carriage, waggon, cart, truck, sleigh, or sled, shall at any time stop, or be suffered to stand loaded or unloaded, on any of the said streets of Halifax, or public road, such carriage, waggon, cart, truck, sleigh, or sled, shall not be placed nearer to the centre of such street or road than eighteen inches.

Penalty.

Sec. 10. Every person offending against any of the regulations of this Act, shall upon conviction on the oath of one credible witness, before any one of His Majesty's Justices of the Peace, forfeit and pay for each and every offence, the sum of ten shillings; and in case of refusal or neglect to pay, the same shall be levied by warrant of distress on the goods and chattels of such offender; and for want thereof, such offender shall be committed by such Justice to the county gaol, for a period not exceeding forty-eight hours.

Time of
Prosecution.

Sec. 11. All prosecutions under the Act shall be commenced in forty-eight hours after the committing of the offence.

Application of
Penalties.

Sec. 12. All monies arising from fines under the provisions of the Act, shall be paid into the hands of the treasurer of the county wherein it was recovered; and be applied to the repair of highways in such county.

The foregoing is a temporary Act, and has been continued from time to time.

Locking
Wheels.

By the 4 G. 4, c. 30. 3. V. 170, It shall not be lawful for the driver of any loaded waggon or cart, to cause the same to be drawn upon any of the public roads of this Province, with any one or more of the wheels thereof locked or chained, to prevent it from turning, unless such driver shall cause to be

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placed under such wheel or wheels, an iron shoe not less than five inches in width, and sixteen inches in length; or a wooden shoe of the same length, and eight inches wide, connected with a chain to some part of such waggon or cart, in such way, that such wheel or wheels so chained or locked, shall be borne up and drawn upon said shoe. Any person who shall drive any waggon or cart on any of the said roads contrary to the foregoing regulation, or who shall place and leave on any of the said roads, any stones, sticks, or other obstructions, shall be subject to a fine of ten shillings; to be recovered on the oath of one credible witness, before any one of His Majesty's Justices of the Peace for the county or town wherein the offence was committed; which sum, if not paid, shall be levied by warrant from such Justice of the Peace, from off the goods and chattels of the offender; and for want thereof, he shall be committed to the gaol of such county, for the space of twenty-four hours. And all monies arising from fines under the provisions of this Act, shall be applied for the repair of the roads in the county, wherein the same shall be received. *Perpetual.*

The regulations prescribed, and the offences mentioned in the foregoing Statutes, are so clearly stated and defined therein, that no particular or extended observations need here be made as to the proceedings before Justices touching any of those offences. It will be sufficient to say, that the proceedings must be the same as in other general cases for the recovery of penalties, or the punishment of the offenders; that is, by taking the information in writing, summoning the party charged, hearing the complaint, issuing a warrant of distress, or other final process, as directed by the Statute; as to all which, and other requisite proceedings, and the Forms required, directions will be found, respectively, under the Titles,—Information; Summons; Conviction; Distress; Commitment.

Directions.

CATTLE:

INFECTED CATTLE.

By the 19 G. 3, c. 2. 1 V. 213, The Justices of the Peace are empowered and directed to make regulations for the preventing the going at large of infected horses, mares, geldings, and cattle, and the spreading of distempers among them, in manner as shall be most agreeable to the circumstances of such county or the townships therein; and any person who shall transgress such regulations so made, shall be subject to a

fine not exceeding ten pounds, to be recovered on complaint or information before any two of His Majesty's Justices of the Peace for the county wherein the offence shall be committed, or before the Justices in the Sessions held for such county or township; and be levied, on non-payment thereof, by warrant of distress and sale of the offender's goods and chattels, and applied for the township wherein the offence was committed. *Perpetual.*

II. MALICIOUSLY KILLING OR MAIMING CATTLE.

By the 4 & 5 G. 4, c. 4. 3 V. 181, Persons convicted in His Majesty's Supreme Court, or General or Quarter Sessions of the Peace, of maliciously, unlawfully, and willingly killing, maiming, wounding, or otherwise hurting any horse, mare, gelding, ox, bull, cow, steer, heifer, sheep, or other cattle, shall suffer such punishment by imprisonment or public whipping, as such Court shall in their discretion adjudge.

Provided always, that nothing herein contained shall subject any person to be punished or imprisoned under the directions of this clause, who shall be proceeded against for damages by the party aggrieved; nor shall any person who shall have been punished or imprisoned under the directions of this clause, be liable to any suit or action at the instance of the party aggrieved, but such punishment or imprisonment shall be forever a bar to any such action or suit. *Perpetual.*

III. CRUEL TREATMENT OF CATTLE.

By 6 G. 4, c. 22. 3 V. 213, Any person owning or having the charge of horses, sheep, or other cattle, who shall wantonly and cruelly maim, wound, or otherwise hurt any of the same, shall upon conviction before any one magistrate, by any one or more witnesses, forfeit for each offence a sum not exceeding three pounds, nor less than five shillings; and on non payment thereof, be committed to the gaol or house of correction, for a time not exceeding twenty days, at the discretion of the magistrate—one half of the sum forfeited shall be paid to the prosecutor, and the other half for the use of the poor of the parish in which the offence was committed. *Perpetual.*

Directions.

The proceedings by the Justice, on a complaint under the Statute relating to infected cattle, and likewise under the foregoing one for the cruel treatment of cattle, will be the same as in other prosecutions before him for the recovery of penalties; as to which proceedings, with the Forms required, see respectively, Titles,—Information; Summons; Conviction;

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Distress ; Commitment. With regard to the offence of killing or maiming cattle, it will be observed, that prosecutions for the same must, by the terms of the Statute, be in the Supreme Court or in the Sessions ; but any one Justice may receive complaints of such offence on oath, and issue his warrant for the arrest of the party charged, and on his being brought before him, he need not take any written examinations as in case of felony ; but if sufficient bail to his satisfaction be offered, he must take such bail for the appearance of the party, to answer to the complaint at the next term of the Supreme Court, or of the Sessions, and thereupon discharge the prisoner ; or if such bail is not produced, the Justice must commit the prisoner to gaol.

For directions as to bailing, and for the Forms required, see respectively, Titles,—Information ; Warrant ; Bail ; Commitment.

CHEAT.

OF Cheats punishable by public prosecution there are two kinds,—by the Common law, and by Statute.

I. BY THE COMMON LAW.

CHEATS which are punishable by the common law, may in general be described to be,—deceitful practices, in defrauding or endeavoring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty ; as by playing with false dice ; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written ; or by persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment ; or by suppressing a will ; and such like.

It seems to be the better opinion, that the deceitful receiving of money from one man to the use of another, upon a false pretence of having a message and order to that purpose, is not punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but only depends on a bare naked lie.

As there are frauds which may be relieved civilly, and not punished criminally, so there are other frauds which in a

Distinction as to public offence and private injury.

special case may not be helped civilly, and yet shall be punished criminally; thus, if a minor go about the town, and pretending to be of age, defraud many persons by taking credit for considerable quantities of goods, and then insist on his non-age; the persons injured cannot recover the value of their goods, but they may indict and punish him for a common cheat.

The distinction which as it seems will solve almost all cases of this kind, was taken in a case where the defendant was indicted and convicted for selling beer short of the due and just measure, to wit, sixteen gallons, as: and for eighteen. Upon a motion in arrest of judgment, it was said by the Court, "This is only an inconvenience and injury to a private person, arising from his own negligence and carelessness in not measuring the liquor upon receiving it. Offences that are indictable, must be such as affect the public, as if a man use false weights and measures, and sell by them to all, or to many of his customers; or use them in the general course of his dealing; so if there be any conspiracy to cheat. But in the present case, it is only a non-performance of his contract, for which the other may bring his action. So the selling an unsound horse for a sound one is not indictable. The distinction to be attended to in all cases of this kind, is this; that in such impositions or deceits where common prudence may guard persons against their suffering from them, the offence is not indictable; but where false weights and measures are used, or false tokens produced, or such methods taken to cheat and deceive as people cannot by any ordinary care or prudence be guarded against, there it is an offence indictable.

The distinction therefore is this; if a person sell by false weights, though only to one person, it is an indictable offence; but if without false weights, he sell to many persons a less quantity than he pretends to sell, it is not indictable.

All frauds affecting the Crown and the public at large, are indictable, though arising out of a particular transaction, or contract with the party.

The punishment for a cheat at common law is, generally, fine and imprisonment. 1 *Burn's*, 467 to 470.

II. BY STATUTE.

By the 32 G. 2, c. 20. 1 V. 31, "If any person or persons shall falsely and deceitfully obtain or get into his, her, or their hands or possession, any money, goods, chattels, jewels, or other things, of any other person or persons, by colour and means of any privy false token, or counterfeit letter, made in another man's name, to a special friend or acquaintance, for

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the obtaining of money, goods, chattels, jewels, or other things, and shall be thereof convicted in any Court of Oyer and Terminer, Court of Assize and General Gaol Delivery, or Quarter Sessions of the Peace, every such offender shall suffer such punishment by imprisonment, setting upon the pillory, public whipping, or hard labor in the house of correction, as such Court where the offender shall be convicted shall in their discretion adjudge." *Perpetual.*

A person endeavouring by a counterfeit letter to defraud another of goods, and being apprehended on suspicion of such fraud, before he hath got the goods into his possession, seems not to be within this Statute. *See 1 Burn's, 470.*

Warrant for a Cheat; on the foregoing Statute, 32 G 2, c. 20.

County of } To A. C., one of the Constables of the town-
ship of — in the said County.

[Seal.] WHEREAS complaint hath been made unto me A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, upon the oaths of A. I. and A. K. of — in the said county, yeomen, that on the — day of — in the year of our Lord —, A. O. of — in the said county, yeoman, did by a false privy token, [or counterfeit letter as the case may be,] that is to say, by [here particularise the offence,] falsely and deceitfully obtain and get into his hands and possession, from C. I. of —, trader, certain goods and chattels of him the said C. I., that is to say [here mention the things,] contrary to the Statute in that case made. These are therefore to command you, upon sight hereof, forthwith to apprehend the said A. O., and bring him before me, to answer unto the said complaint, and further to be dealt withal according to law. Given under my hand and seal, at — in the said county, the — day of — in the year aforesaid.

A. M., J. P.

For the course of proceeding on taking an Information, and as to Bail or Commitment for this offence, see those Titles respectively.

CHIMNIES, see FIREWARDS.

CLERK OF THE PEACE.

THE Custos Rotulorum shall appoint an able and sufficient person, residing in the county or division, to execute the office of Clerk of the Peace, by himself or his sufficient deputy, (to be allowed of by the said Custos Rotulorum,) and to take and receive the fees, profits and perquisites thereof, for so long time only, as such Clerk of the Peace shall well demean himself in the said office. *Eng. Stat. 1 W. c. 21, § 5. 1 Burn's, 503.*

The Custos Rotulorum shall not sell the place of Clerk of the Peace, or take any bond or other assurance to receive any reward, fee, or profit for such appointment, on pain that each of them shall be disabled to hold his office, and forfeit double the value of the thing given.

By *Eng. Stat. 1 W. 3, c. 21*, Every Clerk of the Peace before entering upon the execution of his office, shall in open Sessions take the oath following:—I A. B. do swear, that I have not, nor will pay any sum or sums of money, or other reward whatsoever, nor given any bond, or other insurance to pay any money, fee or profit, directly or indirectly to any person or persons whomsoever, for such nomination and appointment; so help me God.

The several duties of the Clerk of the Peace, with other matters relating to the office, under various Statutes of the Province, may for convenience be arranged under the following heads:—

FEES, &c.

By the 28 G. 3, c. 15. 1 V. 261, The following fees are allowed for the Clerk of the Peace:—

Drawing an Indictment if found,—two shillings and sixpence.

Every Trial and Judgment,—two shillings and sixpence.

Every Submission,—two shillings and sixpence.

Concordatum fee,—one shilling and sixpence. Every petition and proceedings thereon,—two shillings and sixpence.

Every cause continued by traverse or otherwise,—one shilling.

Every Presentment proceeded on, to be paid by the delinquent,—three shillings and four pence.

Certificate of Administering the State Oaths,—one shilling.

Warrant from the Court,—one shilling.

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Every Recognizance,—each person, one shilling.

Discharging a Recognizance,—one shilling.

By the 2 W. 4, c. 3, § 13. 4 V. 114, Every person who shall take out any tavern licence, shop licence, or general licence, shall pay to the Clerk of the Peace, the fee of five shillings, in full for his services in and about the granting such licence. *Perpetual.*

By the 5 W. 4, c. 13, § 1. 4 V. 385, There shall be raised by presentment in the Sessions in each county and district, such annual sum, not less than twenty pounds, as shall be deemed necessary for paying the Clerk of the Peace for such of his services in that office for which no provision is otherwise made. *Temporary.*

FINES.

By the 23 G. 3, c. 1. 1 V. 230, All Clerks of the Peace, shall once in every six months, certify under the seals of their respective Courts, into the office of the Clerk of the Supreme Court at Halifax, an account, stating therein the several fines, penalties and forfeitures adjudged to the King in their respective Courts, together with the names of the persons who shall be adjudged to pay the same; and in case the same shall have been adjudged within the said six months, then such Clerks of the Peace shall certify the same as aforesaid. And in case any Clerk of the Peace shall neglect to make a return in the manner aforesaid every six months, he shall forfeit and pay for every neglect the sum of five pounds, to be recovered on information by any person whatsoever, in His Majesty's Supreme Court at Halifax. *Perpetual.*

LICENSES.

By the 2 W. 4, c. 3, § 9 & 12. 4 V. 113, Clerks of the Peace must certify on all licences for the sale of spirituous liquors, that security has been given therefor, as prescribed by the Statute, and they shall register in a book, and keep a correct list of all licences granted in every year, with the names, additions, and residences of the parties licenced, and a memorandum of the house or shop for which such licence is granted, and the several dates thereof, with an account of the bonds or securities given previous to taking out such licences, and the amounts of the licence duty payable on every such licence, and the respective times when the same are payable, and paid or

received, and such book shall be exhibited to the Justices in Session, and to the Grand Juries whensoever they shall require the same. *Perpetual.*

MARRIAGES.

By the 35 G. 3, c. 2. 1 V. 348, Certificates of Marriages solemnized by virtue of the Statute, shall be filed with the Clerk of the Peace for the county where such marriages take place, who shall within three days record every such certificate, under the penalty of five pounds for every neglect, to be recovered in any Court of Record; one half to the use of the poor of the township wherein the offence was committed, and the remainder to the person prosecuting therefor. *Perpetual.*

RETURNS, &c.

By the 39 G. 3, c. 10. 1 V. 409, Clerks of the Peace shall on every day of the holding of a Court of General or Quarter Sessions of the Peace, enter in a book, the names of every Justice of the Peace who shall attend at such Court, and assist in the business thereof; and if any such Justice shall leave the Court before the business of the day shall be completed, or without obtaining the consent of the major part of the magistrates then sitting, his name shall not be entered in the said book for that day, but shall be omitted as though he had totally absented himself from such meeting. And the said Clerks of the Peace shall on the first day of the sitting of the Supreme Court, in the respective counties, next after any General or Quarter Sessions, return into the said Supreme Court, lists of all such magistrates as have wholly neglected to attend at such preceding Sessions. And if any Clerk of the Peace shall neglect to make such return, he shall forfeit and pay a fine of five pounds for every such neglect. Nothing in the Act to extend to the members of His Majesty's Council, the Justices of the Courts of Common Pleas, or to Justices throughout the Province. *Perpetual.*

COALS AND COAL MINES.

I. MEASURING COALS.

By the 32 G. 3, c. 4. 1 V. 291, The Sessions in the several counties shall appoint Measurers of Coal, and every person

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so appointed, who shall refuse to accept of such office, or shall be guilty of any neglect or misbehaviour in the execution of the duties thereof, shall forfeit and pay for the use of the poor in the town wherein he resides, a sum not exceeding three pounds; to be recovered before any two Justices of the Peace for the county. And by the 56 G. 3, c. 4. 2 V. 200, Every Measurer of Coal who shall undertake to attend the measurement thereof, from more than one vessel at one and the same time, shall forfeit for every such offence, forty shillings; to be recovered before any one Justice, by warrant of distress; and to be applied for county purposes. Such Measurer shall be allowed sixpence per chaldron, to be paid by the seller of the article. *Perpetual.*

II. SETTING FIRE TO COAL MINES.

By the 3 W. 4, c. 9. 4 V. 197, It is enacted, that persons convicted of unlawfully and maliciously setting fire to any mine of coal, or cannel coal, within this Province, shall suffer death as felons, without benefit of clergy. And all or any accessories or accessaries to any such offence, before the offence committed, shall be deemed and taken to be a principal or principals in the said offence, and shall be liable to be indicted, convicted and punished, as principal or principals therein. *Perpetual.*

Directions for the recovery of penalties under the Statutes relating to the measuring of coals, and also the Forms which may be made to answer, will be found, respectively, under the Titles,—Information; Summons; Conviction; Distress. The duty and proceedings of the Justice, on an Information for setting fire to coal mines, will be the same as in all other cases of capital felony, and will be found set forth under the Titles,—Felony; Examination; Commitment. A party charged with this latter offence cannot be let to bail by Justices of the Peace, but must be committed for trial; and the examinations taken, must be sent into the Supreme Court, as in other cases of capital felonies.

Directions.

COIN.

By the 32 G. 2, c. 13. 1 V. 15, Persons who shall be duly convicted of forging or counterfeiting the King's money, being gold or silver coin of England, or of Great Britain, are declared to be traitors, and shall suffer as in cases of high treason. *Perpetual.*

British Coin.

Foreign Coin.

By the 32 G. 2, c. 20, § 6. 1 V. 20, Every person duly convicted at the Court of General Gaol delivery, or Quarter Sessions, of counterfeiting, or impairing, diminishing, or imbasing any foreign coins, current in the Province, by washing, clipping, rounding, filing, or scaling the same; or of uttering any counterfeited or impaired coin, knowing the same to be so counterfeited, or impaired, shall be set in the pillory for one hour, and one of the ears of such offender shall be nailed thereto, and he shall also be publicly whipped, through the streets of the town where the offence was committed, and shall pay all charges of the prosecution.

Clippings of Coin.

Sec. 7. Every person convicted as aforesaid, of buying or receiving any clippings, scalings, or filings of money, shall forfeit the sum of twenty pounds; one moiety thereof for the support of His Majesty's Government in this Province, and the other moiety to him or them who shall inform and sue for the same; and also be imprisoned for the space of three months.

NOTE. In place of the punishments of setting in the pillory, cutting off an ear, public whipping and imprisonment, prescribed for the offences above specified in the last mentioned Statute, persons convicted thereof, may, by virtue of the 56 G. 3, c. 6. 2 V. 201, be sentenced to be put and kept to hard labour in the house of correction at Halifax, or elsewhere, or upon the highways, or other public works in the Province, for any time not exceeding seven years. The other punishments prescribed, namely of bearing the charges of prosecution, and paying the penalty of twenty pounds, cannot it is presumed, be dispensed with; especially where the prosecutions are at the instance of private persons.

Copper Coin.

By the 28 G. 3, c. 9. 1 V. 258, No persons whatsoever, shall import, vend, or knowingly and willingly offer in payment, or circulate, any half pence, or other copper coin, other than Tower half pence, or such copper coin as may and do legally pass current in Great Britain or Ireland, on pain of forfeiting such base half pence and coin, and paying for the use of the poor of the town where such offence shall be committed, a sum not exceeding double the amount or nominal value of such base half pence and copper coin so imported, vended, offered in payment, or circulated as aforesaid, to be recovered on information before any two of His Majesty's Justices of the Peace within the town or county where such offence shall be committed. *Perpetual.*

Directions.

The course of proceeding by the Justice, on charges upon the Statute first mentioned under this head, which makes the counterfeiting therein mentioned to be treason, will be the same as in other cases of capital felonies, and for which, with

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the forms, see *Titles,—Information ; Warrant ; Examination ; Commitment*. For the duty and proceedings of the Justice, and also the forms under the Statute next mentioned, concerning counterfeiting foreign coin, &c. see, respectively, *Titles,—Information ; Warrant ; Bail ; Commitment* ; and for the proceedings and forms upon charges under the Statute, respecting counterfeit half-pence, see *Titles,—Information ; Summons ; Conviction ; Commitment*.

COMMITMENT.

I. WHO MAY BE COMMITTED.

THERE is no doubt but that persons apprehended for offences which are not bailable, and also all persons who neglect to offer bail for offences which are bailable, must be committed. And it is said, that wheresoever a Justice is empowered by any Statute to bind a person over, or to cause him to do a certain thing, and such person, being in his presence, shall refuse to be bound, or to do such thing, the Justice may commit him to the gaol, to remain there till he shall comply.

If a prisoner be brought before a Justice, expressly charged with felony upon oath, the Justice cannot discharge him, but must bail or commit him. But if he be charged with suspicion only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony, be in truth no felony in point of law, the Justice may discharge him ; as if a man be charged with felony for stealing a parcel of the freehold, or for carrying away what was delivered to him, and such like, for which though there may be cause to bind him over, as for a trespass, the Justice may discharge him as to felony, because it is not felony. But if a man be killed by another, though it be by misadventure, or in self-defence, (which is not properly felony,) or in making an assault upon a minister of justice in execution of his office, (which is not at all felony,) yet the Justice ought not to discharge him, for he must undergo his trial for it, and therefore he must be committed, or at least bailed. But commitment by the Justices of the Peace, almost in all cases, (except for the peace, good behaviour, felony, or higher offences) is but to retain the party until he hath made fine to the King ; and therefore if he offer to pay it, or find sureties by recognizance to pay it, he ought not to be committed, but to be delivered presently. 1 *Burn's*, 552—3.

Persons not
bailable or not
finding bail.

Charged with
felony or sus-
picion thereof.

Not paying
fine.

II. TO WHAT PLACE.

ALL felons shall be committed to the common gaol, and not elsewhere. But Justices, by particular Statutes, may commit other offenders to the house of correction, to the stocks, or other custody.

Different
County.

Generally, if a man commit felony in one county, and be arrested for the same in another county, he shall be committed to gaol in that county where he is taken ; yet if he escape, and be taken on fresh suit in another county, he may be carried back to the county where he was first taken. 1 Burn's, 553.

III. THE FORM OF THE COMMITMENT.

In whose
name.

It must be in writing, either in the name of the King, and only tested by the person who makes it ; or it may be made by such person in his own name, expressing his office, or authority, and must be directed to the gaoler or keeper of the prison. But a Magistrate may by word, order an offender to be detained in custody, until he can make out his warrant of commitment. So a Magistrate in the case of a breach of the peace within his view, may instantly order the offender to be taken into custody.

Name.

It should contain the name and surname of the party committed, if known ; and it is safe, but not absolutely necessary, to set forth that the party is charged upon oath.

Oath.

Cause.

It ought to contain the cause, as for treason, or felony, or suspicion thereof ; otherwise if it contain no cause at all, if the prisoner escape, it is no offence at all. And it appears that a warrant or mittimus, "to answer to such things as shall be objected against him," is utterly against law. Also, it ought to contain the certainty of the cause ; and therefore if it be for felony, it ought not to be generally for felony, but it must contain the special nature of the felony, briefly, as for felony "for the death of J. S.," or for burglary, "in breaking the house of J. S.," to the end that the party may know for what he suffers, and how he may regain his liberty. It must have an apt conclusion ; as if it be for felony,—“to detain him till he be thence delivered by law.” or “by order of law,” or “by due course of law.” But when a man is committed for contumacy, in refusing to do something which he ought to do, the conclusion ought to be, “until he comply and perform the thing required,” for he is entitled to be discharged immediately upon the performance of his duty. It must be under seal ; without this, the commitment is unlawful, the gaoler is liable to false imprisonment, and the wilful escape by the gaoler, or breach

Seal.

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of prison by the felon, makes no felony. But this must not be intended of a commitment by the Sessions, or other Court of Record; for there the record itself or a memorial thereof, which may at any time be entered of record, are a sufficient warrant, without any warrant under seal.

It should also set forth the time and place at which it is made. Time and place.

Where a Statute appoints imprisonment, but limits no time how long, in such case the prisoner must remain at the discretion of the Court.

A warrant of commitment in execution after a conviction, must shew before whom the conviction was, as likewise the authority of the person committing. Authority. 1 *Burn's*. 554 to 556.

IV. CHARGES OF THE COMMITMENT.

By the 8 & 9 G. 3, c. 2. IV. 147, All persons committed to the common gaol within any county, by any Justice or Justices of the Peace, for any offence or misdemeanor, having means or ability thereunto, shall bear their own reasonable charges for so conveying them to the said gaol, and the charges also of such as shall be appointed to guard them to such gaol, and shall so guard them thither; and if any such persons so to be committed, shall refuse at the time of their commitment to defray the said charges, and shall not then pay or bear the same, then such Justice or Justices of the Peace, shall and may by writing under his or their hand and seal, or hands and seals, give warrant to the constable or constables of the town or place where such persons shall be dwelling, or from whence they shall be committed as aforesaid, or where they shall have any goods, within the county, town, or place, to sell such, and so much of the goods and chattels of the said persons so to be committed, as by the discretion of the said Justice or Justices, shall satisfy and pay the charge of conveying them to gaol; the appraisement to be made by four of the honest inhabitants of the town or place where such goods or chattels shall remain and be; and the overplus of the money which shall be made thereof, shall be delivered to the party to whom the said goods shall belong. And if the said persons so to be committed as aforesaid, shall not have, or be known to have any goods or chattels which may be sold for the purpose aforesaid, within the county, town, or place, then the said Justice or Justices, on application by any constable or other officer who so conveyed such persons to gaol, shall upon oath examine into and ascertain the reasonable expenses to be allowed such constable or other officer, and shall forthwith, without fee or reward, by warrant under his or

COMMITMENT.

their hand and seal, or hands and seals, order the Treasurer of the county to pay the same, which the said Treasurer is hereby required to do, as soon as he receives such warrant; and any sum so paid shall be allowed in his accounts. And in counties where no Treasurer shall have been chosen, or in case such Treasurer shall not have any money in his hands to pay the sum so ordered, then the same shall be paid out of the Public Treasury of the Province. *Perpetual.*

By the 5 W. 4, c. 13. 4. V. 385, Money may be raised by presentment in the Sessions, to defray the expense of conveying persons accused of any treason or other criminal offence, to the county or district gaol, being the distance of three miles or upwards, and so as the same do not exceed sixpence per mile. *Temporary.*

V. COMMITMENT DISCHARGED.

It seems that a person legally committed for a crime, certainly appearing to have been done by some one or other, cannot be lawfully discharged by any one but the King, till he be acquitted on his trial, or have an ignoramus found by the Grand Jury, or none to prosecute him on a proclamation for that purpose. 1 *Burn's*, 558.

Form of Commitment.

County of } A. M., Esquire, one of the Justices of our
 } Lord the King assigned to keep the peace in the
 [Seal.] said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the keeper of the common gaol at —, in the said county; These are in His Majesty's name to charge and command you, that you receive into your said gaol the body of A. O., late of — in the said county, yeoman, taken by A. C., one of the Constables of the township of — in the said county, and by him brought before me for suspicion of felony, that is to say, for stealing — of the value of —, the property of A. I., and that you safely keep the said A. O. in your said gaol, until he shall thence be delivered by due course of law. And herein fail you not. Given under my hand and seal, at — in the said county, the — day of —, in the year of our Lord —.

A. M., J. P.

County

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Warrant of Commitment in General.

County of } A. M., Esquire, one of the Justices of our
 } Lord the King assigned to keep the peace within
 [Seal.] the said county; To A. C., one of the Constables
 of the township of — in the said county, and to the keeper
 of the common gaol at —, in the said county. These are
 to command you the said Constable, in His Majesty's name,
 forthwith to convey and deliver into the custody of the said
 keeper of the said gaol, the body of A. O., charged upon the
 oath of A. I. of — in the said county, yeoman, before me,
 with — [here specify the offence.] And you the said keeper
 are hereby required to receive the said A. O. into your cus-
 tody in the said gaol, and him there safely to keep, [here set
 forth the time,] or until he shall be thence delivered by due
 course of law. Herein fail you not. Given under my hand
 and seal at —, the — day of —, in the year of our Lord
 A. M., J. P.

Commitment of a Person for further Examination.

County of } A. M., Esquire, one of the Justices of our
 } Lord the King assigned to keep the peace within
 [Seal.] the said county; To A. C., one of the Constables of
 the township of — in the said county, and to the keeper of the
 common gaol at — in the said county. These are to com-
 mand you the said Constable, in his said Majesty's name,
 forthwith to convey and deliver into the custody of the said
 keeper of the said common gaol, the body of A. O., charged
 this day before me the said Justice, on the oath of A. I. on
 suspicion of having in the night of the — day of — instant,
 at the township of — in the said county, burglariously
 broken and entered the dwelling house of the said A. I., (or
 as the case may be) but inasmuch as A. W., a material and
 necessary witness against the said A. O., for the burglary and
 felony aforesaid, resides at —, (or as the case may be) a
 distance of — miles from the said dwelling house of the said
 A. I., (or as the case may be) and he the said A. I. hath not
 been able to procure the attendance of the said A. W., but
 will use his best endeavour so to do, on the — day of —
 instant. You the said keeper are hereby required to receive
 the said A. O. into your custody, in the said common gaol,
 until — next, the — day of — instant, when you are
 hereby required to bring the said A. O. at — in the said
 county, before me, or before such others of His Majesty's
 Justices of the Peace for the said county, as shall be then and

there present, to be re-examined, and further dealt with according to law. Herein fail you not. Given under my hand and seal, at —, the — day of —, in the year of our Lord —.*

Warrant of Distress for Expenses on a Commitment to Gaol by a Justice or Justices, pursuant to the 8 & 9 G. 3, c. 2. 1 V. 147.

County of } To A. C., one of the Constables of the
} township of — in the said county.

[Seal.]

WHEREAS by warrant under the hand and seal of me, A. M., one of His Majesty's Justices of the Peace in and for the said county of —, bearing date the — day of —, in the year of our Lord one thousand eight hundred and —, A. O., late of — in the said county, labourer, was committed to the common gaol of the said county, for —, [here state the offence or misdemeanor,] he the said A. O., having means or ability to bear his own reasonable charges for so conveying or sending him to the said gaol, and the charges of those appointed to guard him thither; And whereas A. D., one of the Constables of the township of — in the said county, who in obedience to such warrant, conveyed the said A. O. to the said common gaol of the said county, hath made oath before me the said Justice, that the said A. O. refused at the time of his commitment and sending to the said gaol, to defray the said charges of conveying him as aforesaid, and did not then pay, nor hath since paid the same, which said charges amount to the sum of —.

These are therefore to command you, to sell such and so much of the goods and chattels of the said A. O., as shall satisfy and pay the said sum of —, being the charges of such his conveying to the said gaol, the appraisement to be made by four of the honest inhabitants of the township where such goods and chattels shall be; and I do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of at the expiration of four days from the time of taking such distress, unless the said sum of —, for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid, returning the overplus upon demand to him the said A. O., the reasonable charges of taking, keeping, and selling such distress, being first deducted. And if sufficient distress cannot be found of the goods and chattels of the said A. O., whereon to levy the said

* The time of the detainer must be reasonable. The usual practice is stated to be, to commit from three to three days. 1 Chitt. Crim. L. 74.

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COMMITMENT.

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sum of —, that then you certify the same to me, together with this warrant. Given under my hand and seal, at — in the said county, the — day of —, in the year of our Lord one thousand eight hundred and —.

A. M., J. P.

Order on Treasurer of the County, to reimburse Expenses of conveying a Prisoner to Gaol, where Goods, &c. belonging to him cannot be found whereon to levy a Warrant of Distress for the same,—pursuant to the 8 & 9 G. 3, c. 2. 1 V. 147.

To the Treasurer of the County of — :
County of) WHEREAS application hath been this day made
 } to me, one of His Majesty's Justices of the Peace
[Seal.] in and for the said county, by A. D., one of the
Constables of the township of — in the said county, to allow
the reasonable expenses of his conveying A. O. to the com-
mon gaol at — in the county aforesaid, who was by me
committed to the said gaol for —, [here state the offence,]
it having been duly made appear to me the said Justice, that
the said A. O. hath not money nor goods within the said county,
sufficient to bear the charges of himself and those who conveyed
him to the said gaol ; and I having upon oath, examined into
the expenses thereof, and made due enquiry into the premises,
do hereby ascertain and allow the reasonable expenses thereof,
at the sum of —, which I hereby order and require you the
Treasurer of the said county, forthwith to pay the said A. D.
Given under my hand and seal, at —, this — day of —,
in the year of our Lord one thousand eight hundred and —.

A. M. J. P.

COMMON.

By the 10 G. 3, C. 4. 1 V. 160, the General Sessions in the several counties, shall from time to time, affix and settle such regulations as they may think most proper and convenient to be observed and followed by the inhabitants in the several townships within such county, in regard to the Common belonging to the same. And any person who shall transgress any such rules and regulations, or shall neglect or refuse to obey the same, shall forfeit and pay a fine not exceeding forty shillings, for every such offence ; and in case such offender shall refuse or neglect to pay the fine, then it shall be

lawful for any two Justices of the Peace to grant a warrant of distress for levying the same in the usual manner ; one half to be to the person complaining, and the other half for the use of the poor of the township where the offence was committed ; and in default of such distress, to commit such offender for any space not exceeding ten days. *Perpetual.*

The course of proceeding by Justices under the foregoing Statute, with the forms required, will be the same as in similar cases for the recovery of penalties before them, and may be found under the respective Titles,—Information ; Summons ; Distress ; Commitment.

COMMON FIELDS.

I. OF THEIR LINES AND BOUNDARIES.

By the 5 G. 3, c. 1. 1 V. 107, every proprietor of lands lying unfenced, or in any Common Field, shall once in two years, on six days notice given him, his agent or attorney, by the next proprietor or proprietors adjoining, run the lines, and make and keep up the boundaries of such lands, or common fields, by stones or other sufficient marks ; and every party so neglecting and refusing, shall forfeit the sum of twenty shillings, one half of which shall be to the party complaining, and the other half to the Overseers of the poor, for the use of the poor of said township ; and to be heard and determined before any one of His Majesty's Justices of the Peace within the same county. *Perpetual.*

Concerning
Final Process.

REMARKS. It may be remarked, as well with regard to the foregoing enactment, as all other similar instances of Statutes imposing fines or penalties, recoverable before Justices of the Peace, without mentioning any mode by which the payment thereof shall be enforced, that it appears very doubtful, what final process, or course of proceeding should be adopted to compel such payment. It would seem clear, that in any such case, a warrant of distress, in nature of an execution against the goods of the party convicted, cannot be issued. As it is laid down however, and will be found under the Title—Commitment,—that “wheresoever a Justice is empowered by any Statute to cause a person to do a certain thing, and such person being in his presence, shall refuse to do such thing, the Justice may commit him to the gaol till he shall comply,”—and as warrants of commitment in execution, after convictions before Justices, are frequently spoken of without any particular restrictions or ref-

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erences, it would seem, that in proceedings under the foregoing enactment; and in all similar cases as above mentioned, where the party complained of is before the Justice at the time of his conviction, and on his being informed of the fine imposed on him, and required to pay it, he shall refuse to do so, he may be forthwith committed to gaol, until he shall comply. Such commitment, as in other cases, must be in writing, under the hand and seal of the Justice, and it must state the particular cause of commitment, as "for refusing to pay the said fine of ——" and it must also state that the party "be detained in the said gaol, until he shall pay the said fine of ——" For other directions as to proceedings under the foregoing clause of the above Statute, and for the Forms required, see the general directions and Forms in similar cases, given under the respective Titles,—Information; Summons; Conviction; Commitment.

II. OF BOUNDARY FENCES OF ADJOINING LANDS.

By the 8 G. 4, c. 26. 4 V. 13, The proprietor of any field adjoining to any Common Field enclosed and improved, in case his part of the fence dividing his land from such Common Field, shall become deficient, or out of repair, shall immediately repair such deficiency, and make the same a good and sufficient legal fence; and in case he shall neglect so to do, within the space of three days after notice given him, it shall and may be lawful for any one of the Fence Viewers, upon application being made to him in such case, forthwith to cause such deficient fence to be built up and repaired, if in his judgment the same be insufficient; and the person that of right ought to repair and maintain the same, shall pay double the costs and charges expended for the closing thereof, and in case of refusal, such Fence Viewer may recover the same by action on the case, according to the value, in manner aforesaid. Provided always, that no Fence Viewer shall be allowed more than three shillings per day in his account, for his own trouble and time expended herein. And if any Fence Viewer, when notified, shall neglect his duty herein, he shall forfeit two pounds for each offence, to be recovered on due proof before any Justice of the Peace for the County or District in which such lands lie, one half to the person who shall prosecute for the same, and the other half to the poor of the township or place where the offence was committed. *Perpetual.*

NOTE. By the words,—“by action on the case, according to the value, in manner aforesaid,” used in the above enactment, it is not easy to discover precisely what is intended.

It is indeed sufficiently obvious, that a reference is thereby made to some mode previously prescribed in the Statute, for the recovery of a penalty or sum of money. There are, however, two several penalties, imposed by two previous clauses of the Act, one of ten pounds to be recovered by bill, plaint, or information, in any Court of Record; and the other of not more than five pounds, nor less than three pounds, recoverable before two Justices of the Peace. Now, which of these modes of recovery is referred to in the words above cited, is quite a matter of doubt and uncertainty. On the one hand, it can scarcely be supposed, that the Legislature intended that a few shillings expended by a Fence Viewer in making or repairing part of a boundary fence, should be recovered by bill, plaint, or information, in the Supreme or Inferior Court; and on the other hand, to a lawyer, or any other person at all conversant with the nature and denominations of different actions at law, it would appear a very strange thing, that an *action on the case* for the recovery of any sum whatever, should be prosecuted in a summary manner before Justices of the Peace. This instance is one among several others which might be mentioned, of the very unskilful and ambiguous wording of many of our Provincial Statutes; and they indicate most clearly, how expedient it is, that more skill and attention should be employed, than are usually afforded, about the first penning of our Statutes, or during their passage through the Legislature.

For directions, and the Forms in prosecutions for the recovery of the penalty imposed by the foregoing enactment, on a Fence Viewer neglecting his duty, see respectively, Titles, —Information; Summons; Conviction; Commitment.

III. REGULATIONS BY PROPRIETORS.

Making Regulations.

By the 10 G. 4, c. 27. 4 V. 50, The proprietors of any Common Field may meet at some place in the township wherein such field is situated, and make such regulations as may from time to time appear to them necessary and expedient, respecting the ordering, fencing, and improving of such field, and the keeping the fences thereof in repair, and making and repairing roads in and across the same; and such regulations shall be entered in a book, and be signed by the Chairman of the Meeting. The said book and the proof of the entry made therein shall be good evidence of such regulations, in any Court, or wheresoever the proof of such regulations may be necessary.

Sec. 3. The said proprietors shall, annually, at one of the said meetings, appoint from among themselves, a commit-

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tee of not less than three nor more than five persons, to carry into effect for the year then ensuing, the regulations made as aforesaid.

Sec. 4 & 5. Whenever the said committee shall find it necessary to raise money for carrying into effect any of the said regulations, they shall assess the amount to be raised on the several proprietors or occupiers of such Common Field, by an even and equal rate, according to the quantity and quality of the land held in such field, by each proprietor or occupier; and shall, by an instrument in writing under their hands, appoint a collector to collect the sums so assessed; and upon the neglect or refusal of any proprietor or occupier, to pay the amount wherewith he has been rated, after due notice given of such assessment, the said collector shall have power to sue for and recover the same with costs from such proprietor or occupier, before any one or two Justices of the Peace, or before any Court of Record, according to the amounts of such rates, in the same manner as debts under and above three pounds are now by law recoverable.

Assessments
and recovery
of rates.

Sec. 6. The said committee may include in any sum assessed by them as aforesaid, for every member of such committee, the sum of five shillings for each day in which he shall be actually occupied and employed in carrying into effect the aforesaid regulations. *Temporary.*

By the 2 W. 4, c. 62. 4 V. 190, The regulations made at any meeting of the proprietors of a common field, of which meeting due notice has been given, shall be good and binding, if the same have been passed with the assent of such number of the proprietors present, whose rights and shares in such field, when added together, amount to more than one half of the land owned in such field by the proprietors then present at such meeting, although such rights and shares do not amount to one half of the land contained in such field. *Annual.*

The proceedings and forms requisite for the recovery of the rates mentioned in the foregoing Statute, will be found under the title,—Summary Trials.

CONFESSION, see EVIDENCE and EXAMINATION.

CONSPIRACY.

CONSPIRACY, is when two or more combine together, to execute some act for the purpose of injuring a third person,

as by indirect means to impoverish him, or falsely and maliciously to charge him with being the reputed father of a bastard child; or to maintain one another in a matter whether it be true or false. Every confederacy to injure individuals, or to do acts which are unlawful or prejudicial to the community, is a conspiracy. Thus, journeymen confederating and refusing to work, unless for certain wages, may be indicted for a conspiracy, and the offence consists in the conspiring, and not in the refusal, for all conspiracies are illegal, although the subject matter of them may be lawful. A bare conspiracy to do a lawful act, to an unlawful end, is a crime, though no act be done in consequence thereof. 1 *Burn's*, 567.

A conspiracy being a trespass, and tending to a breach of the peace, is cognizable by the General Sessions. *Id.* 569.

Combination
to raise wages.

By the 56 G. 3, c. 27. 2 V. 215, All contracts, covenants, and agreements, entered into by or between any journeymen, manufacturers, or other workmen, or persons, for obtaining an advance of wages of them or any of them, or any other journeymen, manufacturers, or workmen, or other persons in any manufacture, trade, or business; or for lessening or altering their, or any of their usual hours, or time of working; or for decreasing the quantity of work; or for preventing or hindering any person from employing whomsoever he shall think proper to employ in his manufacture, trade or business; or for controlling or any way affecting any person carrying on any manufacture, trade or business, in the conduct or management thereof, shall be illegal, null and void, to all intents and purposes whatsoever; and every journeyman, workman, or other person, who shall be lawfully convicted of entering into, or being concerned in entering into any such illegal contract, covenant or agreement, upon his own confession, or the oath of one credible witness or more, before any two or more Justices of the Peace for the county, town, or place where the offence shall be committed, within three calendar months after the offence was committed, shall by order of such Justices, be committed to and confined in the common gaol within their jurisdiction, for any time not exceeding three months, or at the discretion of such Justices, shall be committed to some house of correction within the same jurisdiction, there to be kept to hard labour for any time not exceeding two months.

Sec. 3. Every journeyman, workman, or other person, who shall enter into any combination to obtain an advance of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or for any other purpose contrary to the act; or who shall by giving

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money, or by persuasion, solicitation, or intimidation, or by any other means, directly, or indirectly, endeavour to prevent any unhired or unemployed journeyman, or workman, or other person in any manufacture, trade, or business, or any other person wanting employment in such manufacture, trade, or business, from hiring himself to any manufacturer or tradesman, or person conducting any manufacture, trade or business; or who shall, for the purpose of obtaining an advance of wages, or for any other purpose contrary to the provisions of the Act, by any means whatsoever, directly, or indirectly decoy, persuade, solicit, intimidate, influence, or prevail, or attempt, or endeavour to prevail on any journeyman, or workman, or person hired or employed, or to be hired or employed in any such manufacture, trade, or business, to quit his work or service; or who shall hinder or prevent, or attempt to hinder or prevent any manufacturer, or tradesman, or other person from employing in his or her manufacture, trade, or business, such journeyman, workman, and other persons, as he or she shall think proper; or who, being hired or employed, shall refuse to work with any other journeyman, or workman employed or hired to work therein, and who shall be lawfully convicted of any of the said offences, upon his own confession, or the oath of one credible witness or more, before any two or more Justices of the Peace for the county town, or place where such offence shall be committed, within three calendar months next after the offence was committed, shall, by order of such Justices, be committed to and confined in the common gaol within his or their jurisdiction, for any time not exceeding three months; or otherwise be committed to some house of correction within the same jurisdiction, there to be kept to hard labour, for any time not exceeding two months.

Sec. 4. All contracts, associations, agreements, covenants, and engagements, in writing, or not, entered into between master tradesmen, or manufacturers, or any other persons, for the purpose of regulating the wages of workmen, or for adding to or altering the usual hours of work, or for increasing the quantity of work, or for regulating or fixing the price to be paid for any work done, or article made by such master tradesmen or manufacturers, or other persons, whereby their customers, or others who may deal with them, may be affected, shall be illegal and void; and every master tradesman, manufacturer, or other person, being thereof convicted by the oath of one witness, before two Justices, within twelve calendar months, shall forfeit and pay for each and every offence, twenty pounds; one half to the informer, and the other half to the poor; and if the same is not immediately paid, with costs of

Contracts &c.
among Master
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ges, &c.

prosecution, such Justices shall levy the same by warrant of distress, with the costs attending the distress and sale ; and for want of sufficient distress, such Justices shall commit the offender or offenders to the common gaol or house of correction, for any time not exceeding three, or less than two calender months. *Perpetual.*

Such directions as are requisite, and also the Forms, which may readily be made to serve for proceedings under the above Statute, will be found, respectively, under the Titles,—Information ; Summons ; Conviction ; Distress ; Commitment.

CONSTABLES.

Bound to execute Warrants of Justices.

It has always been holden, that the Constable is the proper officer to a Justice of the Peace, and bound to execute his warrants ; and therefore it has been resolved, that where a Statute authorises a Justice of the Peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve such warrant, and may be indicted for disobeying it.

Not to part with Warrant

In no case is a Constable required to part with the warrant out of his own possession, for that is his justification.

Shewing Warrant.

A Constable if he be sworn, and commonly known to be an officer, and act *within* his own precinct, need not shew his warrant to the party, notwithstanding he demand the sight of it ; but Constables, and all other persons whatsoever, making an arrest, ought to acquaint the party with the substance of their warrant. And all *private* persons to whom such warrants shall be directed, and even officers if they be not sworn, and commonly known, and even these if they act *out* of their own precincts, must shew their warrants if demanded. And it is certainly expedient, that whenever an arrest be made by virtue of a warrant, the warrant (if demanded at least,) should be produced. 1 *Burn's*, 578–9.

Appointing Deputy.

Inasmuch as the office of Constable is wholly ministerial, and no way judicial, it seems that he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself ; yet it doth not seem to be settled that he can make a deputy, without some special cause. *Id.* 574.

Action against Constable.

By the 54 G. 3, c. 15. 2 V. 122, No action shall be brought against any Constable, or other officer, or against any

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person acting by his order, and in his aid, for any thing done by him in obedience to any warrant under the hand and seal of any Justice of the Peace, until demand has been made and left at the usual place of his abode, of the perusal and copy of such warrant, and the same has been refused for six days after such demand ; and if after such demand and compliance therewith, any action shall be brought against any such Constable or other officer, or against any such person acting in his aid, for any such cause as aforesaid, without making the Justice who signed or sealed the said warrant, defendant, on producing or proving such warrant, at the trial of such action, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in such Justice. And if such action be brought jointly against such Justice, and the Constable, or other officer, or persons acting in his or their aid as aforesaid, then, on proof of such warrant, the Jury shall find for such Constable or other officer, and persons so acting as aforesaid, notwithstanding such defect of jurisdiction.

Sec. 10. No action shall be brought against any Constable, or other officer or person acting as aforesaid, unless the same shall be commenced within six calender months after the act complained of shall have been committed. *Perpetual.*

For the fees of a Constable, see Title,—Fees.

Concerning the execution of a warrant by a Constable, see Titles,—Arrest and Warrant.

CONTAGIOUS DISEASES, &c.

I. QUARANTINE.

By the 2 W. 4, c. 13, § 7. 4 V. 138, Masters of vessels on board of which any infectious disease shall appear, on their arrival at the place to which they shall be appointed to repair, shall report their case to one of the officers named in the Act, or to some Justice of the Peace, who shall forthwith give notice thereof to the local Board of Health, or to the Governor or His Majesty's Council.

Masters of
Vessels to
Report, &c.

Sec. 17. A Justice of the Peace, on application made to him, shall issue his warrant for apprehending any person who shall have quitted any vessel liable to perform quarantine, or who shall have escaped from quarantine, and for conveying such person to the vessel from which he or she shall have come on shore, or to any vessel performing quarantine, or lazaret, from which he or she shall have escaped ; or for the con-

Person escap-
ing from Qua-
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fining of any such person in any such place of safe custody, (not being a public gaol,) and under such restrictions as to having any communication with any other persons, as may, in the discretion of such Justice of the Peace, (calling to his aid, if he shall think fit, any medical person,) appear to be proper, until such person can be safely conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the Board of Health, or His Majesty's Council, as to the disposal of any such person; and to make any further order, or grant any further warrant that may be necessary in that behalf.

Releasing
from Quarantine.

Sec. 21. Upon proof made before a Justice of the Peace, by the oaths of the master or other person having charge of a vessel under quarantine, and of three or more persons belonging thereto, or by the oaths of two or more credible witnesses, that such vessel, and all and every such person and persons respectively, have duly performed quarantine, and that the vessel and all and every person and persons are free from infection, then and in the said respective cases, such Justice of the Peace shall give a certificate thereof.

Hearing, and
punishment of
offences.

Sec. 31. All offences committed against any of the provisions of the act, for which no specific penalty, forfeiture, or punishment is therein provided, shall be tried, heard and determined, before any three Justices of the Peace of the county or place, where such offence or disobedience shall happen; and the offender on conviction thereof, shall be liable to such forfeiture or penalty, not exceeding the sum of one hundred pounds, or to such imprisonment not exceeding twelve months for any one offence, as shall in the discretion of the three Justices who heard and determined the same, be judged proper; and such forfeiture and penalty shall be paid, one moiety to the person prosecuting for the same, and the remainder to His Majesty, to be applied as the proceeds of other penalties and forfeitures are by the act directed to be applied. *Annual.*

Recovery of
penalties.

By the 3 W. 4, c. 67. 4 V. 241, made in amendment of the above mentioned act, it is provided, that all fines, penalties, and forfeitures, imposed or incurred by or under the said above mentioned act, when the whole amount thereof shall not exceed five pounds in the whole, shall and may be prosecuted, recovered, levied, and paid, before and by order of any two Justices of the Peace for the county or district where the offence was committed. *Annual.*

Directions.

The forms of the Information and Warrant required under the before recited 7th clause of the aforesaid Statute respecting Quarantine, may readily be framed from the words of the clause. The information should be taken in the form of an

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affidavit, made by the person giving the information, in which should be stated briefly, the fact of the person complained of having quitted the vessel, or the place of quarantine, and stating names, times, and places, and other material circumstances, as the case may be. This affidavit must be briefly recited in the body of the warrant, the merely formal part of which will be the same as in ordinary cases for the arrest of a party, and will be found under the title,—Warrant. Such directions as are requisite, and also the forms, which may readily be made to serve for prosecutions under the before recited 31st. section of the same Statute, and also under the foregoing Act of the 3 W. 4, made in amendment thereof, will be found under the respective Titles,—Information; Summons; Conviction; Commitment.

II. HEALTH WARDENS.

By the 2 W. 4, c. 14. 4 V. 148, Justices in Sessions, Appointment. in every other county or district except Halifax, may nominate and appoint from time to time, such and so many persons as may be necessary, to fill the office of Health Wardens, within the several towns of the Province, except Halifax, who shall act gratuitously, and be sworn to the due performance of their office, pursuant to the act. *Temporary.*

III. REGULATIONS, &c. BY SESSIONS.

By the 5 W. 4, c. 18. 4 V. 405, If, on any occasion, at any towns or places distant from Halifax, any infectious disease or distemper shall have been introduced, or there shall appear imminent danger of the introduction or spreading thereof, before the directions of the Governor, or His Majesty's Council thereon, can be transmitted to such town or place, then, if there is no Board of Health in such town or place, it shall be lawful for the Justices of the Peace for the county, in Special Sessions assembled, by any order or orders then and there to be made, to establish all such rules and regulations as to such Justices may appear necessary or expedient, as well for preventing as far as possible the introduction into this Province, or spreading within the same, of any such infectious disease or distemper, as also for the relief of any persons suffering under, or likely to be afflicted by any such disease, and likewise for declaring and bringing into immediate and full operation, all such parts of the regulations in the "Act more effectually to provide against the introduction of infectious or contagious diseases, and the spreading thereof in this Pro-

vince," and in this Act, as such emergency shall require to be put in force in such town or place ; and likewise for enforcing the performance of quarantine, according to the provisions of the Statute therefor ; and moreover for appointing officers and persons to execute the said regulations, so far as may appear requisite ; and the said Justices in Session shall forthwith cause copies of all such orders to be transmitted to the Governor, or in his absence to His Majesty's Council ; and the same orders, until the Governor, or His Majesty's Council, shall alter or annul the same, shall continue to be in force.

Consulting
Physicians.

Sec. 5. In all towns and places where there shall be no Board of Health, except in the town of Halifax, it shall be lawful for the Justices in Special Sessions, to appoint such number as may be deemed requisite, of consulting physicians, whose duty it shall be, in case of any alarm of any contagious or other dangerous disease or distemper occurring, or likely to occur in any such town or place, to give to the said Justices all such professional advice and information as they may request, with a view to the prevention of the said diseases, and at all convenient times to assist such Justices with their counsel and advice, in all matters that relate to the health of the inhabitants.

Removing
infected
persons.

Sec. 6. In places where no Boards of Health, or Health Wardens are appointed, any three Justices in General or Special Session assembled, shall have power to remove or cause to be removed from any dwelling house, or other place within the jurisdiction of the said Justices, or from any ship or vessel coming near to or within the same, any person or persons sick with any contagious or infectious disease, to any hospital, house, or place, proper for the reception of such sick and exposed persons. Provided it shall be certified unto the said Justices in Sessions, in some writing to be signed and attested to by any two or more physicians of the town or place, or if only one, then by that one physician, that in their or his opinion, such removal is necessary or expedient for the safety of the inhabitants ; and in case any person sick with such contagious or infectious disease, in any house or place within such jurisdiction, cannot, in the opinion of such physicians, be removed, then the said Justices in Session shall have power to cause such house to be vacated by the removal of the other occupants thereof, or to cause any house or tenement contiguous thereto, to be vacated, by the removal of the occupants thereof, for such time as the physicians consulted by the said Justices in Session, shall think expedient, and the safety of the inhabitants of the place may require. *Temporary.*

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IV. RECOVERY OF PENALTIES.

By the 5 W. 4, c. 17, § 30. 4 V. 402, Concerning nuisances, it is enacted, that it shall be lawful for any Board of Health, or Health Wardens, appointed and acting under the Act, "more effectually to provide against the introduction of infectious or contagious diseases," to limit and restrain to any sum under ten pounds, but not below ten shillings, the amount to be prosecuted for, in respect of any of the several penalties imposed by or incurred under the said last mentioned Act, for the offences to which such Act has reference, and all penalties thus limited, shall and may be sued for and recovered before any one Justice of the Peace for the county or place wherein the penalty shall be incurred, and all larger penalties shall be sued for and recovered in any Court of Record in the same county.

Sec. 31. All such limited penalties under the said last mentioned Act, shall be sued for and recovered in the name and on the information of any Health Inspector within whose limits the offence shall have been committed, or as a debt due to him, as the case may be; and if there be no Health Inspector, then in the name of the Clerk of the peace of the county or district, unless His Majesty's Attorney or Solicitor General think proper to prosecute at the suit of the Crown, and give notice accordingly; and in all cases where the prosecution shall be in the name of the Health Inspector, or Clerk of the peace, he shall be deemed the official prosecutor, and shall, as shall any Health Warden, be and be deemed a competent witness in such prosecution or suit, and shall recover costs of suit from the defendant, if judgment be given for the penalty or sum prosecuted for, but shall not be liable to pay to the defendant any costs, if the judgment pass in favour of the defendant; and all monies to be recovered by any such suit or prosecution, shall be paid into the hands of the Treasurer for the town, or for the county as the case may be, and shall be appropriated towards defraying the expenses there to be incurred in and about the enforcing and carrying into effect this Act, and the Acts therein recited.

Sec. 33. If any appeal shall be entered against the judgment of a Court of Summary Jurisdiction, or any Justice of the Peace, given for any sum of money sued for by any Clerk of the peace, or Health Inspector, either as a penalty, or as a debt due to him, under the provisions of the said Act, "more effectually to provide against the introduction of infectious or contagious diseases," or of this Act, and such appeal be not duly prosecuted at the first sitting of the Court to which the

Appeals.

appeal is prayed, then on such default being certified by the Clerk thereof, execution shall be forthwith issued from the Court, or by the Justice by whom the judgment was rendered. *Temporary.*

Directions.

As it is provided in the above recited 30th and 31st Sections of the aforesaid Statute, 5 W. 4, c. 17, that the limited penalties therein mentioned, incurred under the aforesaid Act "to provide against the introduction of infectious diseases," may be sued for before one Justice of the Peace, by a Health Inspector, or Clerk of the Peace, as a debt due to him, the proceedings and the Forms of Summons and Execution requisite for the recovery of such limited penalties, will be the same as in cases for the recovery of private debts before a single Justice, and will be found under the Title,—Summary Trials.

CONVICTION.

THE power of a Justice of the Peace to convict an offender in a summary way, without a trial by jury, is in restraint of the common law, and in abundance of instances a tacit repeal of that famous clause in the Great Charter, that a man shall be tried by his equals; which also was the common law of the land long before the Great Charter, even from time immemorial, beyond the date of histories and records. Therefore, generally, nothing shall be presumed in favour of this branch of the office of a Justice of the Peace, but the intendment will be against it. For which reason, where this special power is given to a Justice of the Peace by Act of Parliament, it must appear that he hath strictly pursued it, otherwise the common law will break in upon him and level all his proceedings. So that where a trial by jury is dispensed with, yet he must proceed, nevertheless, according to the course of the common law in trials by juries, and consider himself only as constituted in the place both of judge and jury. Therefore there must be an information or charge against a person, then he must be summoned or have notice of such charge, and have an opportunity to make his defence; and the evidence against him must be such as the common law approves of, unless the Statute direct otherwise; then if the person is found guilty, there must be a conviction, judgment and execution, all according to the course of the common law, directed and influenced by the special authority given by Statute. 1 Burn's, 586.

Directions.

The Justice must also take and preserve minutes of all the proceedings before him, from which, when a removal of

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the same to a Superior Court is required by a writ of certiorari, he must make and send up a record thereof, according to the form set forth in the Statute hereinafter mentioned. The difficulty of drawing up a conviction in due form, has induced the Provincial Legislature in the Statute alluded to, being the 5 W. 4, c. 2. 4 V. 353, to frame and prescribe a general Form of a Record of Conviction, to be used in all cases where no particular Form for the record thereof shall have been directed. In here treating further of this subject, the Form of Record prescribed in the said Statute will first be set forth, and then the several essential parts of it will be separately exhibited, and the law establishing and explaining them, respectively, will be stated and applied. It is proper, however, to observe here, that in cases where a Justice is authorised to convict of an offence on his own view, or in his own hearing, the said Statute does not apply, and the Form of Record therein prescribed will not suit, and indeed cannot be followed in any such case, but a more brief though sufficiently comprehensive Form is to be used; as in cases under the Statutes against Drunkenness, profane swearing, and performing ordinary labour, or using sports on the Lord's day; which brief Forms will be found, respectively, under the titles of those last mentioned offences. In all instances, however, where a Justice is not authorised to convict on his own view, or in his own hearing, the Form of Record set forth in the said Statute must, according to the direction therein contained, be strictly adhered to, either literally, or at least in words to the same effect.

By the aforesaid Statute it is enacted, that,—In all cases wherein a conviction shall have taken place, and no particular Form for the Record thereof shall have been directed, the Justice or Justices, or other person or persons duly authorised to proceed summarily therein, and before whom the offender or offenders shall have been convicted, shall and may cause the Record of such Conviction to be drawn up in the manner and form following, or in any words to the same effect, *mutatis mutandis*, that is to say :

County of —, }
 [or as the case may be,] } BE it Remembered that on the
 — day of —, in the year of our Lord —, at — in the
 county of —, A. B., of — in the county of —, la-
 bourer, (or as the case may be,) personally came before me
 (or before us, &c.) C. D., one (or more as the case may be,) of His Majesty's Justices of the Peace for the said —, and informed me (or us, &c.) that E. F. of —, in the county of —, on the — day of —, at — in the said —, did

(here set forth the fact for which the information is laid,) contrary to the form of the Statute in such case made and provided ; whereupon the said E. F., after being duly summoned to answer the said charge, appeared before me, (or us, &c.) on the — day of — in the said —, and having heard the charge contained in the said information, declared he was not guilty of the said offence, (or as the case may happen to be,) did not appear before me, [or us, &c.] pursuant to the said summons, [or did neglect and refuse to make any defence against the said charge,] whereupon I [or we, &c., or, nevertheless I, or we, &c.,] the said Justice, [or Justices,] did proceed to examine into the truth of the charge contained in the said information, and on the — day of — aforesaid, at — aforesaid, one credible witness, to wit, A. W. of — in the county of —, upon his oath deposeth and saith, [if E. F. be present, say in the presence of the said E. F.,] that within — months, [or as the case may be,] next before the said information was made before me, (or us, &c.,) the said Justice, by the said A. B., to wit, on the — day of —, in the year —, the said E. F., at — in the said county of —, (here state the evidence, and as nearly as possible in the words used by the witness, and if more than one witness be examined, state the evidence given by each,) (or if the defendant confess, instead of stating the evidence, say)— and the said E. F. acknowledged and voluntarily confessed the same to be true ; therefore it manifestly appeareth to me, (or us, &c.,) that the said E. F. is guilty of the offence charged upon him in the said information, I (or we, &c.,) do hereby convict him of the offence aforesaid, and do declare and adjudge, that the said E. F. hath forfeited the sum of —, of lawful money of Nova Scotia, for the offence aforesaid, (with the sum of —,) costs in this behalf, (if any allowed,) to be levied, collected, and distributed, (or paid,) (as the case may be,) according to the form of the Statute in that case made and provided. Given under my hand, (or our hands,) and seal, (or seals,) the — day of —, in the year of our Lord —.

Appeal.

Sec. 2. In all cases where any Justice or Justices, or others, shall by virtue of any Statute, fix, impose, or order payment of any fine, penalty, or sum of money, upon or against any person or persons whomsoever, he or they may appeal against the decision to the then next Supreme Court, or Court of Common Pleas, to be holden in the county or district where such decision took place ; and such appeal shall be granted by such Justice, or Justices, or others, upon the party appealing entering into a bond, with sufficient surety, in treble

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the amount of such fine, penalty, or sum of money, (including the costs attending the conviction, or order for payment thereof, if any there be,) in the name or names of, and payable to the party or parties prosecuting, and conditioned for the due prosecution of such appeal, and the abiding of the judgment thereupon, by the party or parties so appealing, (for which bond the Justice or Justices, or other persons granting such appeal, and whose duty it shall be to prepare such bond, upon the demanding of such appeal, shall receive and take the sum of two shillings and sixpence and no more,) and such Justice or Justices, or other persons, shall thereupon, on or before the first day of the term of the Court to which such appeal shall be had, send to the said Court such bond, and his minutes of judgment and proceedings, and other papers in the matter of such appeal, without its being necessary in such stage of the cause, to make up a formal record of such conviction; and such further proceedings and judgment shall be thereupon had and given, as is or are now used, had, or given, in and upon appeals from the judgments of Justices of the Peace, in civil cases, and with the like costs as are allowed in such cases; and the judgment thereupon shall be final and conclusive, and execution thereupon may issue in the same manner, and to the same effect as in civil cases; and when an appeal shall have been had against any judgment or conviction, in either a civil or criminal case, and no proceeding therein be had during the next ensuing term of the Court appealed to, either by entry of the cause there, or otherwise, it shall be lawful for the Justice or Justices having given such judgment, or ordered such conviction, to issue his or their execution or warrant against the party so having appealed, in the same manner as if no such appeal had been taken. *Perpetual.*

Be it Remembered, that on the — day of —] The day and year of exhibiting the information must be specified, as well that it may appear to be subsequent to the offence, and prior to all other proceedings, as in order to ascertain that the prosecution is within the time limited by Statute. *I Burn's, 590.*

A. B. of &c. &c.] The name of the informer should be set forth, that it may afterwards appear that the witness is not the same person; since many Statutes give a part of the penalty to the informer, and in such cases the informer cannot be a witness. *Id.*

That E. F. of &c.] It is no objection that the offender appears to be a married woman, for a married woman may be convicted on a penal Statute, without joining her husband. *Id.* 593.

On the — day of —] The time of committing the offence must be stated, that it may appear that the prosecution is commenced in due time ; and also that the party may be enabled to defend himself against a second charge. But the offence need not be proved precisely on the day on which it is laid to have been committed, though it must be proved to have been committed within the time limited for the prosecution. The time of committing the offence must also be stated in that part of the Conviction in which the evidence is set forth, the year as well as the day. *Id.* 592.

At — &c. did &c.] Here must be stated an exact description of the offence, which in order to give the Justice a jurisdiction, must appear to be within both the letter and spirit of the Statute that creates it, and which must be so exactly described, that the defendant may know what charge he is to answer. And the quantity of the offence is more especially necessary to be shown, in cases where it is the measure of the penalty or damages to be given by the Justice. Thus a conviction on the Stat. 43 Eliz. c. 7, § 1, for cutting down trees, was quashed, because it did not mention the number of trees. *Id.* 594.

Negative of
Exceptions.

A summary conviction for any offence created by Statute, must negative every exception contained in the clause creating the offence ; and a defect in omitting so to do, is not aided by a proviso in the Statute, that “ no conviction for any offence in the Act, shall be set aside for want of form, or through the mistake of any fact, circumstance, or other matter, provided the material facts alleged were proved,” for this in effect requires all *material* facts to be alleged, and it is a material fact, that the defendant did not come within the exception in the enacting clause. But where a Statute constitutes an act to be an offence generally, and in a subsequent clause makes a proviso in favour of particular cases, there the proviso is a matter of defence or excuse, which need not be noticed in the information. *Id.* 594.

If a subsequent Statute make any exception to a former one, it is incumbent on the defendant to shew by way of defence, that he comes within such exception. So where negatives are descriptive of the offence, they must be set forth ; for what comes by way of proviso in a Statute, must be insisted on by way of defence, by the party accused ; but where exceptions are in the enacting part of a law, it must appear in the charge, that the defendant does not fall within any of them. *Id.*

In general it is sufficient for the Justices in the description of the offence, to pursue the words of the Statute, but that is not always sufficient, it may be necessary to go farther. It

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was so determined, upon a conviction of a person, *for robbing an orchard* ; which the Court held not sufficient, but it ought to have appeared of what and how the orchard was robbed, that they might judge whether it were a robbery within the meaning of the 43 Eliz. c. 7. *Id.* 595.

Whereupon the said E. F., after being duly summoned, &c.] The party ought to be heard, and for that purpose ought to be summoned in fact ; and if the Justices proceed against a person, without summoning him, it will be a misdemeanor in them, for which an information will lie. But though justice requires that a party should be duly summoned, and fully heard before he is condemned, yet if he be stated to be present at the time of the proceedings, and to have heard all the witnesses, and not to have asked for any further time to bring forward his defence, if he had any, this at all times has been deemed sufficient. *Id.* 595.

The party to be Summomed

The defendant should have a reasonable time allowed him for making his defence. A conviction upon default of appearance, where the summons was to appear immediately upon the receipt of it, was held bad. The summons should be, to appear at a *certain time and place*, and these must be such as to afford the defendant the reasonable means of complying with the summons, and of being fairly heard. The service of the summons should be proved upon oath, and it seems that such service should in general be a personal one. *Id.* 596.

Time for Appearance and Defence.

The summons may be directed either to the party charged, requiring him to appear, or to some third person, requiring him to summon the party. *Id.* 595.

The summons must not be for appearance on an impossible day. In one case it was stated, that the defendant was summoned to appear ; and did appear, on Tuesday the 17th day of April, 1802, &c. In fact the 17th of April fell on a Friday, and it being objected, that the time of the summons being impossible, it was the same as if there had been no summons, the court quashed the conviction on this ground, saying, "there could be no such day, and therefore he could not appear thereupon ; and when the day is not set forth, his appearance on another day cannot be intended." *Id.* 595.

And having heard the charge, &c.] The information must be read to the defendant, who should be apprised of the charge against him, and put to plead thereto, that is either to confess or deny it, before the Justice proceeds to hear evidence in its support. *Id.* 597.

Pleading to the Charge.

Whereupon I or We, &c. did proceed to examine, &c.] It was formerly doubted, whether the Justice having summoned the defendant, might, if he did not, appear, proceed to

Convicting the Party in his Absence.

hear the evidence and convict him, in cases where the Statute does not expressly give such a power, but now it seems perfectly settled, that a party who does not appear after regular notice, may be convicted in his absence. *Id.* 596.

Naming Witness.

One credible Witness, to wit, A. W. of &c.] It is requisite to name the witness, that he may appear to be a different person from the informer; as the Statutes generally give the latter a share of the penalty, and therefore he cannot be a witness, excepting where the act shall specially so direct. *Id.* 597.

Setting out the Evidence.

Upon his oath depose and saith in the presence of the said E. F.] It is fully settled that in all convictions, the evidence must be set out particularly, not merely the result of it; and that sufficient proof must appear upon the face of the record to sustain every material part of the charge, and to warrant the adjudication. The evidence must be set out, in order that the superior court may judge whether the Justices have done right. It is recognised as a known distinction between orders and convictions, that in the former, it is allowed to state the result only of the evidence, but this would undoubtedly be bad in a conviction. A conviction for taking pilchards, contrary to the form of the Statute, was quashed, and the reason assigned was, because the witness swore generally, that the defendant was *guilty of the premises*; for that is taking the law upon himself. Likewise, a conviction on the Candle Act was set aside, because the evidence was not set out, it being only alleged that the offence was *fully and duly proved*. *Id.* 598.

The Evidence may be stated in the words of the Act.

If a conviction state in the words of the Statute, the deposition of the witness to the fact, it is sufficient; but if the Magistrate endeavour to shelter himself from detection, by merely stating the fact of the offence in the terms of the Statute, as if it were the legal effect of the evidence, when the evidence itself would not warrant the conclusion, he subjects himself to a criminal information, upon a proper case laid before the Court. *Id.* 599.

Evidence to be given in presence of Defendant.

Where the informer is permitted to be a witness, he must be sworn and examined in the defendant's presence, (if appearing,) even though he were sworn when the information was taken. And therefore it is not sufficient in such a case, to read over the informant's deposition, in the presence of the defendant, *Id.*

It should appear that the fact was proved to have been committed in some place within the jurisdiction of the Magistrate. *Id.*

Defence.

If the defendant when put on his defence, sets up a claim

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of right to the thing he is accused of taking, or destroying, and there is any pretence or colour for such right, the Justice ought to acquit him. *Id.*

It is sufficient in convictions, if there were such evidence before the Magistrate, as in an action would be sufficient to be left to a jury. He is the sole judge of the weight of the evidence, and the Court will not examine whether or not he has drawn a right conclusion from the evidence. But if no evidence appear on the conviction to support a material part of the information, the Court will quash the conviction. *Id.* 600.

Consideration
of Evidence,

And the said E. F. acknowledged, &c.] In general if the defendant confess the offence, it is needless to go into the proof of it. But this is to be understood of a confession to the full extent of a good and sufficient information; for where either the confession does not come up to the charge in the information, or is made upon an insufficient information, it will not supply the want of evidence in the one case, or of a sufficient charge in the other. 1 *Burn's*, 597.

Confession.

Though a Statute only empowers the Justice to convict upon the oath of one or more witnesses, yet he may convict upon the confession of the party alone. *Id.*

That the said E. F. hath forfeited, &c.] Even in cases where the punishment is fixed by Statute, there must be an express adjudication of the forfeiture. A conviction is in the nature of a verdict and judgment, and therefore must be precise and certain. 1 *Burn's*, 601.

Adjudication.

If imprisonment be adjudged, not for any certain period, but generally till the payment of a fine or the performance of some other act, the condition must be distinctly expressed, and such as is authorised by Statute. If it be till payment, the sum must be fixed. Thus a conviction and commitment for a forcible entry, "there to remain till they shall have paid a fine to the King," the Justices not having assessed any fine, was held to be irregular. So under a Statute which empowered the magistrate to commit until the penalty and charges were paid, a commitment for nine months, or until the sum of £15, "together with charges previous to and attending the conviction shall be paid," was held to be bad, for want of ascertaining the exact sum, by the payment of which the defendant might be released. *Id.*

Punishment.

With the sum of — costs in this behalf.] When an Act gives power to a Magistrate, on a summary conviction, to award the reasonable charges of taking a distress, he must ascertain the amount in the conviction; and an adjudication that the defendant shall pay the *reasonable* charges of the levy, is bad. *Id.* 603.

Costs.

Given under my hand and seal, &c.] A Conviction must be under the hand and seal of the Magistrate, and it is laid down that he ought to give the defendant a copy of the conviction if he demands it, as it is a record. *Id.* 603.

NOTE. From the enactment, however, in the before recited Provincial Statute, that,—On an Appeal the Justice must send up to the Court “his minutes of judgment and proceedings, and other papers in the matter of such appeal, without its being necessary in such stage of the cause to make up a formal record of the conviction,” it would seem that he will not be bound to furnish to the defendant a copy of such record, unless where he may be required to do so in some course of legal proceedings.

It is laid down, that in all cases a Justice of the Peace ought to return a conviction by him to the Sessions, whether the party appeal or not, or whether an appeal is or is not given; that the Crown may not be deprived of its share of forfeitures. 1 *Burn's*, 603.

Directions.

The requisite Forms of Information; Summons; Warrant of Distress, and Commitment; will be found under these Titles respectively; and where an execution is required pursuant to the provision of the before recited Statute, the form of such execution will be similar to that issued on judgments on summary trials before a Justice, for the recovery of debts; and will be found under the Title,—Summary Trials.

Form of the Bond to be given by a Defendant on his Appeal from a Conviction.

Know all men by these Presents, that we, E. F. of — in the county of —, yeoman, and G. H. of — in the same county, —, are jointly and severally, held and firmly bound unto A. B. of — in the county aforesaid, labourer, in the sum of —, of lawful money of the Province of Nova Scotia, (this sum must be treble the amount of the sum which E. F. has by the conviction been adjudged to pay,) to be paid to the said A. B. or his executors, administrators, or assigns, for which payment to be well and truly made, we bind ourselves, and each of us by himself, our and each and every of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the — day of —, in the year of our Lord one thousand eight hundred and —.

Whereas on the — day of —, in the year aforesaid, the above bounden E. F. was, on the information of the said A. B. convicted by and before C. D., one of His Majesty's

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Justices of the Peace for the county of — of the offence of —, and was for the said offence, thereupon adjudged by the said Justice, to pay the sum of —, pursuant to the Statute in such case provided, together with the sum of —, for costs on the said prosecution ; (if any such were adjudged.) And whereas the said E. F. hath appealed against the said conviction, to the — Court at the next ensuing term of the said Court, to be held in and for the said county ;

Now the condition of this obligation is such, that if the above bounden E. F. shall at and during the said next ensuing term of the said — Court, to be holden in and for the said county, duly prosecute his said appeal, and shall abide the judgment of the said Court thereupon ; then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered, } E. F., [Seal.]
in the presence of } G. H., [Seal.]

CORONER.

WHEN it happens that any person comes to an unnatural death, the township shall give notice thereof to the Coroner. Otherwise if the body be interred before he come, the township shall be amerced. It is a matter indictable to bury a man that dies a violent death before the Coroner's inquest have sat upon him. 1 *Burn's*, 633.

Notice of
Death.
Burying.

A Coroner's inquisition ought to show upon the face of it, of what place the party who took it was Coroner, and that it was taken by the oath of "honest and lawful men." *Id.*

The Jury appearing, is to be sworn and charged by the Coroner, to enquire, upon the view of the body, how the party came by his death. For he can take inquisition of death, only upon view of the body, and not otherwise ; therefore if the body be interred before he come, he must dig it up. And this he may do lawfully, within any convenient time, as in fourteen days. *Id.*

Swearing and
Charge.
View.

If the body cannot be viewed, the Coroner can do nothing, but the Justices of the Peace shall enquire thereof. *Id.*

The Jury being sworn, and the body upon view, the Coroner shall enquire upon the oaths of them, in this manner ; viz.—If they know where the person was slain ; whether it were in any house, field, bed, tavern, or company ; who are culpable either of the act ; or of the force ; and who were present, either men or women, and of what age soever they be, if they can speak or have any discretion ; and how many soever

Inquiry as to
the Death.

be found culpable, they shall be taken and delivered to the Sheriff, and shall be committed to the gaol. *Id.* 634.

If a person be found slain in a field, or in the woods, first it is to be enquired, whether he were slain in the same place or not; and if he were brought and laid there, they should do so much as they can to follow their steps that brought the body thither. It shall also be enquired, if the dead person were known, or else a stranger, and where he lay the night before. *Id.*

Also, all wounds ought to be viewed, the length, breadth, and deepness; and with what weapons; and in what part of the body the wound or hurt is; and how many wounds there be; and who gave the wound; and how many be culpable. And they must hear evidence on all hands, if it be offered to them, and as well on the part of the person accused, as against him, and that upon oath. *Id.*

If any be found culpable of the murder, the Coroner shall immediately go to his house, and shall enquire what goods he hath, and how much land he hath, and what it is worth. And when they have thus enquired upon every thing, they shall cause all the land, corn, and goods, to be valued in like manner as if they should be sold immediately. *Id.*

He also shall enquire, whether the persons found guilty fled; for which flight they forfeit goods and chattels. *Id.*

Immediately upon these things being enquired, the bodies of such persons being dead or slain, shall be buried. *Id.* 635.

Death in Prison.

The Coroner ought also to enquire of the death of all persons who die in prison, that it may be known whether they died by violence or any unreasonable hardships; for if a prisoner by the duress of the gaoler come to an untimely death, it is murder in the gaoler, and the law implies malice in respect of the cruelty. And this inquest upon prisoners ought to consist of a party Jury, that is, six of the prisoners, (if so many there be,) and six of the next vill or parish, not prisoners. *Id.*

Inquisition on Death by Violence.

If in any instance of violent death, the Coroner and Jury believe an individual to be guilty of manslaughter, or murder, they are bound to frame their inquisition, containing the result of their enquiries, and to return it to the next assizes. *Id.*

Proceedings in a Case of Murder.

When a Coroner's jury have found that a party has murdered the deceased, the Coroner may issue his warrant to apprehend him, and may commit him to prison; he has also power to summon witnesses, and bind over persons to prosecute and give evidence. *Id.*

Provincial Statute.

By the 9 G. 4, c. 16. 4 V. 32. Every Coroner shall return every inquisition by him taken on view of any deceased person, before the next sitting of the Supreme Court in the

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county or district wherein such Coroners shall have jurisdiction, to the Clerk of the Crown, or his deputy for such county or district, who shall thereupon file the same, and without fee or reward give to such Coroner a certificate of such inquisition having been so returned and filed with him; and therein state the day and year when such inquisition was taken, and when returned and filed as aforesaid; and upon such certificate of the Clerk of the Crown, or any one of his deputies being filed with the Secretary of the Province, it shall be lawful for the Governor or Commander-in-chief, by warrant under his hand and seal, to direct that there be paid to any such Coroner, for each and every such inquisition so taken, returned and filed as aforesaid, the sum of fifty shillings out of the Treasury of the Province.

Sec. 2. The said sum of fifty shillings shall be in full of all demands against the Province, for and on account of such inquest to be made by any Coroner under this or any former Act or Acts whatsoever. And the said Coroner shall apply twelve shillings thereof to pay the Jury's fees, and two shillings and sixpence to pay the Constable's fees; and if there be any further necessary or extraordinary charge attending such inquest, or the burial of the body of the deceased person or persons, such charge shall be defrayed by the county or district wherein such inquest was taken. Provided, that an account of items be rendered by the Coroner taking such inquest, to the Court of General Sessions of the Peace, and approved of by the Grand Jury in the usual manner.

Sec. 3. When any Coroner, in any county, district, town or place, shall be called upon and required to hold any inquisition on any person deceased, when by law such inquisition shall be necessary, such Coroner shall forthwith, either personally summon and require a Jury of the inhabitants of the county, town, or place where such inquisition is held, to attend him on such inquisition; or shall make out and deliver to some Constable or Constables of the county, town, or place wherein such Coroner has jurisdiction, a warrant or precept, commanding such Constable or Constables, to summon a Jury to attend such inquisition at a certain time and place therein to be appointed, and such Jurors shall attend accordingly.

Sec. 4. It shall and may be lawful for any Coroner to proceed to hold and take any inquisition, on view of any deceased person, on Sunday, where he shall deem it proper and requisite. *Perpetual.*

The Coroner ought to execute his office in person, and not by deputy, for he is a judicial officer. 1 *Burn's*, 636.

The Coroner's Precept to Summon a Jury.

County of } To A. B., one of the Constables of the
 } township of — in the said county.

[Seal.]

By virtue of my office, these are in His Majesty's name to require and command you, immediately upon sight hereof, to summon and warn twelve good and lawful men of the said township of —, to be and appear before me A. C., gentleman, Coroner of the said county of —, at — in the township aforesaid, on the — day of —, at — of the clock in the — noon, then and there to enquire of, do, and execute, all such things as on His Majesty's behalf shall be lawfully given them in charge, touching the death of A. D. And be you then there to certify what you shall have done in the premises, and further to do and execute what in behalf of our said Lord the King shall be then and there enjoined you. Given under my hand and seal, the — day of —, in the year of our Lord one thousand eight hundred and —.

A. C.

The Jurors' Oath on the Coroner's Inquest.

You shall diligently enquire, and true presentment make on the behalf of our Sovereign Lord the King, how, and in what manner, A. D., [or a person unknown, as the case may be,] here lying dead, came to his death, and of such other matters relating to the same, as shall be lawfully required of you, according to your evidence : so help you God.

After the foreman is sworn, the rest may be sworn three or four together : as follows—

Such oath as A. F., the foreman of this inquest, hath for his part taken, you, and every of you, shall well and truly observe and keep on your parts, respectively : so help you God.

Witness's Oath.

THE evidence which you shall give to this inquest, on the behalf of our Sovereign Lord the King, touching the death of A. D., shall be the truth, the whole truth, and nothing but the truth, so help you God.

Inquisition of Murder.

County of } An inquisition, indented, taken at — in the
 } county of — aforesaid, the — day of —, in

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the — year of the reign of our Sovereign Lord King William the Fourth, and in the year of our Lord one thousand eight hundred and —, before me, A. C., gentleman, Coroner of our said Lord the King for the county aforesaid, upon the view of the body of A. D. then and there lying dead, upon the oaths of A. B., C. D., E. F., &c., [naming all the twelve Jurors,] good and lawful men of the township of —, in the county aforesaid, who being sworn and charged to enquire on the part of our said Lord the King, when, where, how and after what manner, the said A. D. came to his death, do say upon their oath, that one A. M., late of — in the county aforesaid, yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the — day of —, in the said — year of the reign of our said Lord the King, and in the year of our Lord aforesaid, at the hour of — in the said day, with force and arms, at — in the county aforesaid, in and upon the aforesaid A. D., then and there being in the peace of God and of our said Lord the King, feloniously, voluntarily, and of his malice forethought, made an assault; and that the aforesaid A. M. then and there, with a certain — of the value of —, which he the said A. M. then and there held in his right hand, the aforesaid A. D., in and upon the left side of the said A. D., then and there violently, feloniously, voluntarily, and of his malice forethought, did strike, and then and there gave to the said A. D., with the — aforesaid, in and upon the said left side of the said A. D., one mortal wound, of the breadth of — inches, and of the depth of — inches, of which said mortal wound, the aforesaid A. D. then and there instantly died; and so the said A. M., then and there feloniously killed and murdered, the said A. D., against the peace of our said Lord the King, his crown and dignity. And moreover, the Jurors aforesaid, upon their oath aforesaid, do say, that the said A. M., at the time of the committing of the felony and murder aforesaid, had goods and chattels contained in the inventory to this inquisition annexed, which remain in the custody of B. C., [or had not, nor as yet hath any goods or chattels, lands or tenements, within the county aforesaid, or elsewhere to the knowledge of the said Jurors.] In witness whereof, as well the aforesaid Coroner, as the juries aforesaid, have to this inquisition put their seals, on the day and year, and at the place first above mentioned.

A. C., Coroner. [Seal.]

A. B., [Seal.] C. D., [Seal.]

E. F., [Seal.] G. H., [Seal.]

&c. &c., Jurors.

NOTE. All the Jurors must sign and seal the Inquisition.

An Inquisition on one Drowned by Accident.

[Same as before to the words]—do say upon their oath, that the said A. D., on the — day of — in the year of our Lord aforesaid, at the township aforesaid, in the said county, being in a boat upon the river —, accidentally, casually, and by misfortune, he the said A. D. fell out of the said boat into the water of the said river, and was in the water of the said river then and there suffocated, and drowned; of which said suffocation and drowning, he the said A. D. then and there instantly died: And so the Jurors aforesaid, do say, that the said A. D., in manner and by the means aforesaid, accidentally, casually, and by misfortune came to his death, and not otherwise. In witness, &c. (as above.)

An Inquisition where one dies a Natural Death.

[Same as before to the words]—do say upon their oath, that the said A. D. on the — day of —, in the year aforesaid, at the township of — in the county aforesaid, to wity, in a certain place called —, was found dead: that he had no marks of violence appearing on his body, and died by the visitation of God, in a natural way, and not otherwise. In witness, &c. (as before.)

An Inquisition on one for Cutting his Throat.

[Same as before to the words]—do say upon their oath, that the said A. D., not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, at — aforesaid, in the county aforesaid, in and upon himself, then and there being in the peace of God and of the said Lord the King, feloniously, voluntarily, and of his malice aforethought, made an assault: and that the aforesaid A. D. then and there with a certain knife of the value of —, which he the said A. D. then and there held in his right hand, himself upon his throat then and there feloniously, voluntarily, and of his malice aforethought did strike, and gave to himself then and there with the knife aforesaid, upon his throat aforesaid, one mortal wound of the breadth of — inches, and the depth of — inch, of which said mortal wound, the said A. D. at — aforesaid in the county aforesaid, languished, and languishing lived from the said — day of —, in the year aforesaid, to the — day of — in the same year; and that the said A. D. on the

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— day of — aforesaid, in the year aforesaid, at — aforesaid, in the county aforesaid, of that mortal wound died : And so the Jurors aforesaid, upon their oath aforesaid, say, that the said A. D. then and there in manner and form aforesaid, as a felon of himself, feloniously, voluntarily, and of his malice aforethought, himself killed and murdered ; against the peace of our said Lord the King, his crown and dignity. In witness &c. (as before.)

CORRECTION, HOUSE OF, see BRIDEWELL, &c.

COSTS, see FEES.

COUNTY CHARGES, see RATES.

CRIMINAL OFFENDERS, see COMMITMENT.

DEBTORS ABSCONDING, &c.

By the 1 & 2 G. 4, c. 18. 3 V. 109, It shall not be lawful for any person to sue out any process under the second section of the Act 1 G. 3, c. 8, of which this is in amendment, unless the person applying for the said process, shall previous to the issuing thereof, make an affidavit before one of the Judges of the Court from which such process shall be required ; or in the absence of all the Judges of the said Court, before some one of His Majesty's Justices of the Peace, that the defendant is justly indebted to the plaintiff, in a sum to be specifically mentioned and set forth in the said affidavit ; which affidavit shall be filed in the office of the Clerk of the Court from whence the writ shall issue ; and the sum specified in such affidavit, shall be endorsed on the back of the said writ, in words at length, and signed by the Judge or Justice of the Peace before whom such affidavit shall be made ; and shall also make oath, that he verily believes that the person or persons, whom he is about to summon, is the Factor, Agent, or Trustee, of such absent or absconding person, or that he hath goods, effects, or credits of such absent person in his possession, or under his management and controul. *Perpetual.*

DESERTERS.

I. FROM NAVY.

By the 32 G. 2, c. 12. 1 V. 14, made perpetual by the 34 G. 2, c. 1. 1 V. 56, If any person shall entice any seaman or marine to desert, or harbour, conceal, or assist any deserter from any ship of war, knowing him to be such, the person so offending shall forfeit the sum of twenty pounds, on conviction by one or more credible witness, before any three Justices of the Peace, (*quorum unus*,) for the use of His Majesty's Government, to be levied by distress, and for want of such distress, the person so offending, shall be committed to His Majesty's gaol, there to remain without bail or mainprize, for the space of six months, or till such time as the said fine shall be paid. *Perpetual*.

NOTE. For the law as to searching for deserters from the Navy, and respecting the selling, or receiving the slop clothes of seamen or marines, see Title,—Navy.

II. FROM ARMY.

By the 35 G. 3, c. 5. 1 V. 350, If any person shall harbour, conceal, or assist any deserter from His Majesty's Service, knowing him to be such, the person so offending shall forfeit the sum of five pounds; and upon conviction by the oath of one or more credible witness or witnesses, before any two Justices of the Peace, the said penalty shall be levied by warrant under the hands of the said Justices, by distress and sale of the goods and chattels of the offender; one half of the said penalty to be paid to the informer by whose means such deserter shall be apprehended, and the other half to be paid to the officer to whom such deserter or soldier did belong. And in case the offender so convicted shall not have sufficient goods and chattels whereon distress may be made, to the value of such penalty, or shall not pay such penalty within four days after such conviction, then such Justices may by warrant under their hands and seals, commit such offender to the common gaol, there to remain without bail or mainprize, for three months; or cause such offender to be publicly whipped, at the discretion of such Justices. Provided, that no commission officer shall break open any house to search for deserters, without a warrant from a Justice or Justices of the Peace, (which warrant such Justice or Justices are empowered to

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grant,) obtained upon oath made of a desertion from the regiment to which such deserters belong, and that there is reason to believe that such deserter or deserters be concealed in the dwelling or out-house in which it is proposed to search for him or them, and into which he the said officer has been refused admittance. And by the 43 G. 3, c. 1. 1 V. 467, made in amendment of the foregoing Act, it is declared, that any person harbouring a deserter, knowing him to be such, shall, instead of the penalty of five pounds, prescribed by the above recited Act, be liable to the penalty of twenty pounds; to be recovered by the ways and means, and applied to the purposes directed in and by the said Act. By Stat. 4 & 5 G. 4, c. 34. 3 V. 193, made in further amendment of the said first recited Act, it is provided, that it shall be lawful for the said Justices before whom any conviction shall be had against any offender under the said Act, to commit such offender to the common gaol, after conviction, and before the expiration of the said four days after conviction, unless such offender shall enter into recognizances with two sureties, for his personal appearance before the said Justices, at the expiration of the said four days mentioned in the said Act *Perpetual*.

By the 41 G. 3, c. 4. 1 V. 436, If any person shall directly or indirectly, persuade, entice, or procure, or endeavour to encourage, persuade, entice, or procure any soldier to desert, it shall be lawful for the commanding officer of the regiment, company, or party to which such soldier shall belong, at his option to cause the person so offending, to be prosecuted by information in the Supreme Court, or before two Justices of the Peace, according to the nature and circumstances of the case; and every person, who on the oath of one or more credible witness, or witnesses, on a prosecution before such Justices, shall be convicted by them, of any or either of the foregoing offences, shall forfeit and pay for each offence, five pounds; the same to be paid and applied for the use of the poor of the town or district where the offence was committed; and such offender shall by such Justices be committed to gaol until he or she shall pay and discharge the said penalty of five pounds, together with the cost of prosecution; and if such offender shall not pay the penalty or penalties recovered against him, within ten days after such conviction, the said Justices shall cause such offender to be publicly whipped and discharged from gaol. *Perpetual*.

By the 43 G. 3, c. 1. 1 V. 467, It shall be lawful for the Sheriff of the county, or his deputy, or for any Constable of the town or place where any person who may be reasonably suspected to be a deserter shall be found, or for any officer, or

soldier in His Majesty's Service, to apprehend, or cause such suspected person to be apprehended ; and to bring, or cause him to be brought before any Justice of the Peace living in or near such town or place, who shall examine such suspected person ; and if by his confession, or the testimony of one or more witness or witnesses, upon oath ; or by the knowledge of such Justice, it shall appear, that such suspected person is a listed soldier, and ought to be with the troop, or company to which he belongs, such Justice shall forthwith cause him to be conveyed to the gaol of the county, or to the house of correction, in such town or place where he was apprehended, and shall transmit an account thereof to the Governor, or to the commanding officer of the district, to the end that such person may be removed, and proceeded against according to law. *Perpetual.*

III. EXPENCES OF APPREHENDING, MAINTAINING, AND CONVEYING DESERTERS.

By the 41 G. 3, c. 4. 1 V. 436, The Governor may order payment out of the Treasury, of the reasonable charges incurred by Magistrates in apprehending, securing and maintaining deserters from the Army, or Navy, and transmitting them to the corps or ship to which they belong, in case such charges cannot be recovered upon due application to such corps or ship. *Perpetual.*

By the 43 G. 3, c. 1, § 2. 1 V. 468, The Sheriff of the county, the keeper of every gaol, house of correction, or prison, in which any deserter from the Army shall be confined, shall receive the full subsistence of such deserter, during the time he shall continue in his custody, for the maintenance of such deserter ; but shall not be entitled to any fee or reward, on account of the imprisonment of such deserter ; and the keeper of every gaol, house of correction, or other prison, shall receive and confine such deserter while on the road from the place where he was apprehended, to the place to which he is to be conveyed, either by warrant of the Justice by whom he was examined, and committed, or by order of the Governor, or commanding officer of the district ; and shall not be entitled to any fee or reward on account of the imprisonment of such deserter. *Perpetual.*

NOTE. It is to be observed that this last mentioned Statute only relates to deserters from the Army.

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Form of Information to obtain a Warrant to break open a house to search for a Deserter.

County of } THE information and complaint of A. I.,
 { Lieutenant in His Majesty's — Regiment of Foot,
 made on oath this — day of —, in the year of our Lord one
 thousand eight hundred and —, before me, A. M., one of
 His Majesty's Justices of the Peace for the said county.

The said A. I. deposeth and saith, that on the — day of
 —, in the year aforesaid, A. D., a private soldier in the
 said — regiment, and belonging to a detachment of the said
 regiment, stationed at — in the said county of —, desert-
 ed from the said detachment at — aforesaid, and that he the
 said A. I. hath good reason to believe, and doth believe, that
 the said A. D. is now concealed in the dwelling house of A. O.
 yeoman, at — in the said county, and that he the said A. I.
 hath made application at the said dwelling house to be admitted
 therein, to search there for the said A. D. but he hath been re-
 fused such admittance into the said dwelling house.

And hereupon the said A. I. requireth a warrant of me the
 said Justice, authorising the breaking open and entering of the
 said dwelling house, and the making search therein after the
 said A. D.

A. I.

Before me, A. M., J. P.

Form of a Search Warrant thereon.

County of } To A. C., one of the Constables of the
 { township of — in the said county, and to each
 [Seal.] and every of the other constables of the said
 township.

Whereas it appears to me A. M., Esquire, one of His
 Majesty's Justices assigned to keep the peace in the said
 county, by the information on oath of A. I., a Lieutenant in
 His Majesty's — Regiment of Foot, that on the — day of —,
 in this present year of our Lord one thousand eight hundred
 and —, A. D., a private soldier in the said regiment, and be-
 longing to a detachment of the said regiment stationed at — in
 the said county of —, deserted from the said detachment at
 — aforesaid, and that he the said A. I. hath good reason to
 believe and doth believe, that the said A. D. is now concealed
 in the dwelling house of A. O., yeoman, at — in the said
 county; and that he the said A. I. hath made application at the
 said dwelling house, to be admitted therein, to search there for
 the said A. D., but that he hath been refused such admittance
 into the said dwelling house; these are therefore in the name

of our said Lord the King, to authorise and require you, with necessary and proper assistants, to enter in the day time into the said dwelling house of the said A. O., at — aforesaid, and there diligently to search for the said A. D., and if upon such search, you shall find the said A. D., that you immediately apprehend him, and bring him before me, or some other of His Majesty's Justices of the Peace for the said county, to be dealt with according to law. Herein fail you not. Given under my hand and seal, at — in the said county, the — day of —, in the year aforesaid.

A. M., J. P.

Directions.

For directions as to other proceedings by Justices, by virtue of the Statutes recited under this Title; and for the Forms required, see the general directions, and the common Forms which may be made to serve, contained respectively, under the Titles,—Information; Summons; Conviction; Distress; Recognizance; Commitment.



DISTRESS.

THIS Title relates only to that distress which is authorized for the levying of fines or penalties, imposed for offences against Statutes which direct or sanction that mode of recovering them, under warrants from Justices of the Peace. It is not to be understood to have any reference whatever to Distresses for rent, in which case, as the law now stands in this Province,—Justices of the Peace have no authority to act.

It has been solemnly resolved that these words in an Act of Parliament,—“to be levied by distress,” must be understood of “distress and sale.” 1 *Burn's*, 730.

Distraining at several times.

Where distress is made by virtue of a warrant of a Justice, in nature of an execution, and the value of the goods distrained shall not be found to be to the full amount of the sum to be levied, distress may again be made for the residue of such sum. And the distinction seems to be this, that where there is an entire sum to be levied, it shall not be split, and distress made for part of it at one time, and part at another, and so *toties quoties* for several times; for that is great oppression; but if distress is made for the whole sum, and only a mistake is made as to the value of the goods seized, (which may be of very uncertain or even imaginary value, as pictures, jewels, race-horses, and the like,) there is no reason why the whole sum should not be levied by making a further seizure. *Id.* 704.

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It may be laid down as a general rule, that all chattels personal are liable to be distrained, unless particularly protected or exempted. The tools, utensils, or instruments of a man's trade, or profession, as the axe of the carpenter, or the book of a scholar, a loom, implements of husbandry, beasts of the plough, and sheep, and many other things, although under certain circumstances privileged from distress for rent, yet they are all liable to be taken, where a distress is given in the nature of an execution by any particular Statute. *Id.* 706.

What Goods
may be Dis-
trained.

Furnaces, cauldrons, or other things fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained. *Id.* 706.

In cases of distress for the levying of penalties, a part or the whole of which is given to the King, doors or gates, in case they are locked up, or shut, may be broken open; but where no part of a penalty is given to the King, it seems there is no power to break them open to make the distress. *Id.* 731.

Breaking
open Doors to
Distrain.

NOTE. Distresses should be reasonable, and not too great, and the goods taken should be sold within not less than four, nor more than eight days after seizure, upon due public notice given of the time and place of sale.

In cases wherein no power is specially given to Justices to ascertain the charges of taking, keeping, and selling the distress, it seems that the officer executing the warrant, shall be the sole judge thereof in the first instance; and afterwards, if the owner of the goods distrained shall be dissatisfied, the reasonableness thereof shall be determined by a Judge and Jury, upon an action brought: but in several Statutes this power of ascertaining the charges of distress, and sale, is given to the Justices, and in all such cases they should ascertain and fix such charges. *See 1 Burn's, 731.*

General Form of a Warrant of Distress for levying a Penalty.

County of) To A. C., one of the Constables of the Town-
ship of —, in the said County, and to each of
[Seal.] the other Constables of the said township.

WHEREAS, on the — day of —, in the year of our Lord one thousand eight hundred and —, A. O. of — in the said county of —, yeoman, was duly convicted before me A. M., one of His Majesty's Justices of the Peace for the said county, of the offence of — [here state particularly the offence of which the party was convicted, and as nearly as may be in the words of the Statute declaring it,] at — in the county aforesaid, contrary to the Statute in such case provided, whereby the said A. O. hath forfeited, and hath by me on the

said conviction been adjudged to pay the sum of —, pursuant to the Statute in such case provided, [and if costs are allowed, say—] besides the costs and expenses attending the said conviction, which costs and expenses I have ascertained and assessed at the sum of —. And whereas the said A. O. hath had due notice of the said conviction, but hath hitherto altogether neglected and refused to pay, and hath not yet paid the said several sums of — and —, or any part thereof, respectively; These are therefore in His Majesty's name to command you to distrain the goods and chattels of the said A. O., and on the goods and chattels so distrained, to levy the said several sums of — and —, and if within the space of six days next after such distress by you made, the said several sums of — and —, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of —, being one — of the said penalty of — to —, and the residue of the said penalty, and also the said sum of — being the costs and expenses aforesaid, to A. I. of — in the said county, yeoman, who informed me of the said offence, [or, as the appropriation of the penalty and costs, (if any,) may be directed by the Statute,] returning to him the said A. O. the overplus on demand; the reasonable charges of taking, keeping, and selling the said distress being first deducted. And you are hereby commanded to certify to me the said Justice, on the — day of — now next ensuing, what you shall have done by virtue of this my warrant. Given under my hand and seal at — in the said county, this — day of — in the year aforesaid.

A. M., J. P.

Return to be Indorsed on the Warrant where no Goods can be found.

County of } I, A. C. the within named constable, do hereby
 } by certify A. M., Esquire, one of His Majesty's
 Justices of the Peace for the said county, that by virtue of this
 warrant, I have made diligent search for the goods and chattels
 of the within mentioned A. O., and that I can find no sufficient
 goods and chattels of him the said A. O., whereon to levy the
 within mentioned sums. Witness my hand the — day of —,
 in the year within mentioned. A. C.

Sworn before me the }
 day and year aforesaid, }

A. M., J. P.

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Commitment for want of Distress.

County of } To A. C., one of the Constables of the
 { township of — in the said county, and to the
 [Seal.] keeper of His Majesty's gaol at — in the said
 county.

WHEREAS A. O. of — in the said county, yeoman, was on the — day of —, in the year of our Lord one thousand eight hundred and —, duly convicted before me A. M., Esquire, one of His Majesty's Justices of the Peace for the said county, of the offence of —, [here state the offence particularly, as set forth in the Statute and warrant of distress,] against the form of the Statute in that case made and provided, whereby the said A. O. hath forfeited, and I did on such conviction adjudge him to forfeit and pay the sum of —, besides the costs and expences attending the said conviction, which costs and expences I have ascertained and assessed at the sum of —, pursuant to the Statute in such case provided; and whereas the said A. O. hath had due notice of the said conviction, but hath neglected and refused to pay, and hath not yet paid the said several sums, or any part thereof; and whereas on the — day of —, in the year aforesaid, I did issue my warrant to A. C., one of the Constables of the said township of —, to levy the said several sums by distress and sale of the goods and chattels of the said A. O.; and whereas it appears to me, as well upon the oath of the said Constable, as otherwise, that he the said Constable hath used his best endeavours to levy the said several sums, on the goods and chattels of the said A. O., as aforesaid, but that no sufficient distress can be found whereon to levy the same. Wherefore I do hereby command you the said A. C., to apprehend the said A. O. and him safely to convey to the said common gaol, and to deliver him to the keeper thereof aforesaid, together with this precept. And I do hereby command you the said keeper of the gaol aforesaid, to receive into your custody in the said gaol, him the said A. O. and him there safely to keep until the said several sums shall be paid, [or if a time of imprisonment is limited by the Statute, say for the space of — from the time of this commitment, unless the said several sums shall be sooner paid, or otherwise according to the directions of the Statute concerning the offence.] Given under my hand and seal the — day of —, in the year aforesaid.

A. M., J. P.

If the conviction took place before two Justices or more, *Directions.*
 the warrant of distress and commitment must be filled up ac-

cordingly, and be signed or sealed by both or all of them. Justices must, in every case, carefully examine whether the Statute which directs the levying by a warrant of distress, provides also, that where no goods can be found, the offender shall be committed to prison ; and if to be committed, whether for a limited period, or until payment shall be made ; for unless imprisonment is authorized by the express or implied terms of the Statute, it cannot take place as a matter of course, for want of distress. In every case, the mode directed by the Statute of levying the penalty, or carrying into effect the punishment imposed, must be strictly observed, and according to the course prescribed by the Statute.

DOGS, & c.

By the 34 G. 3, c. 2. 1 V. 331, Every person who shall keep a dog which hath been known to kill or accustomed to worry sheep, or lambs, after notice thereof, shall forfeit and pay ten shillings to the owner of every sheep or lamb so killed ; and shall also forfeit and pay three pounds for every offence ; to be recovered before any one Justice of the county where the offence was committed ; one half thereof for the use of the township or place where the offence was committed, and the other half to the person or persons prosecuting for the same. *Perpetual.*

By the 3 W. 4, c. 71. 4 V. 244, " It shall be lawful for the Justices at any of their General or Special Sessions, or for any two Justices, whereof one shall be a Judge of the Court of Common Pleas, to meet together for the purposes of the Act, and to make, ordain, and put in execution, all such rules, orders, and regulations, as they shall deem necessary or expedient to adopt, as well for preventing the going at large of dogs or other animals, by whose bite the disease, called " canine madness," may be occasioned, as for preventing the occurrence or progress of the said disease ; and also to order and ordain, that all dogs or other animals affected by, or labouring under the said disease, or exhibiting any of the symptoms attending canine madness, or by whose bite the same may probably be communicated to any persons or animals, shall be forthwith destroyed, whenever they shall be found running at large ; and further, to give such orders and directions as to such Justices shall seem necessary or prudent, against the happening of accidents from the bite of any such diseased animal ; and to prohibit the sale of the flesh of any animal which died

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in consequence of having been bitten by any dog or animal labouring under, or affected by the symptoms attending canine madness. And the Justices by whom such orders or regulations shall be made, or other the Justices in General or Special Sessions, may change, alter, or revoke the same, or any part thereof, and make other orders and regulations for the purposes of the Act, and may enforce obedience thereto, respectively, by any penalty or penalties, not exceeding ten pounds for any one offence, as in such orders or regulations, respectively, shall be expressed.

By Sec. 3. Constables and other persons are authorised to kill dogs, or other animals in a rabid state, or liable to communicate by their bite the said disease; and which shall be found going at large, contrary to any such orders or regulations; or to secure and confine them safely.

Sec. 4. Penalties imposed by such orders or regulations, may be sued for, recovered, and levied as debts in the name of any person who will sue for the same, before any two Justices of the county where the offence was committed, and shall be applied to the benefit of the poor therein, *Annual*.

The following directions seem requisite, as to proceedings by Justices under the foregoing Statutes. For recovery of the ten shillings given under the first recited Statute, to the owner of a sheep killed by a dog, the proceedings should be the same as in cases for the recovery of small debts, for which see Title,—Summary Trials;—and for the recovery of the penalty of £3 for the same offence, the proceedings until after conviction, will be the same as in other cases for the recovery of penalties, and for which see, respectively, Titles,—Information; Summons; Conviction. This Statute, like several others of our Provincial Acts, does not direct any final process for the levying or enforcing payment of the penalty, and therefore it is in a great measure nugatory, or ineffectual, by reason that after a conviction under it, the Justice is not authorised either to issue a warrant of distress, or to commit the offender to prison for obtaining the penalty. It may here be remarked concerning all such Statutes, that in summary convictions by Justices, they cannot proceed any further, or in any other manner than is authorised or directed by the Statutes respectively, under which they are acting; and consequently, that they cannot, in any such case, either issue a warrant of distress, or commit the party convicted to prison, to obtain the penalty, unless they are authorised to do so by the terms of the Statute.

Directions.

With regard to the Act respecting mad dogs, as it provides that the penalties imposed shall be recovered "as debts," it would seem, that the proceedings and forms will be the same

as in cases of debt between private parties, and which will be found set forth under the Title,—Summary Trials.



DOWER.

By the 11 G. 3, c. 6. 1 V. 167, "Where a sale of lands or tenements shall be made by a husband and his wife, before the deed shall be sufficient to bar the wife from her dower, she shall be examined by a Justice of the Peace, and if before him she shall declare that she hath freely, and without compulsion from her husband, signed such deed, and therein assigned her right of dower, the Justice shall certify such acknowledgments on the deed, which shall forever bar her from the recovery of her dower to the lands so conveyed." *Perpetual.*



DRUNKENNESS.

By the 32 G. 2, c. 20. 1 V. 29, Every person who shall by view of any Justice of the Peace, or confession of the party, or oath of one credible witness before any such Justice, be convicted of drunkenness, shall forfeit and pay for the use of the poor of the town where such offence is committed, the sum of five shillings, to be levied, on neglect or refusal to pay the same, by warrant of distress and sale of the offender's goods; and the said sum, when paid or levied, shall be delivered to the Overseers of the poor, for the use of the poor as aforesaid; and for want of such distress, such offender shall be set in the stocks for any time not exceeding three hours, at the discretion of the Justice or Justices before whom such offender shall be convicted; and upon a second conviction of drunkenness, in like manner as aforesaid, every such offender shall, over and above the penalty aforesaid, be bound with two sureties in the sum of ten pounds, with condition for the good behaviour; and for want of such sureties, such offender shall be committed to the common gaol, until he shall find the same; provided that every such offence be proved or prosecuted within ten days after it was committed. The Justices shall register all the convictions made before them of drunkenness, and shall certify the same to the next Quarter Sessions, to be kept upon record by the Clerks of the Peace, to be seen without fee. And if any action shall be brought against a Justice, for any proceedings on the said offence, in pursuance

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of this Act, he may plead the general issue, and give the special matter in evidence ; and if the plaintiff shall be nonsuit, or a verdict shall be found for the Justice, he shall have treble costs. *Perpetual.*

Form of Information for Drunkenness.

County of } THE information of A. I., of — in the
 } county aforesaid, yeoman, exhibited before me,
 A. M., Esquire, one of His Majesty's Justices of the Peace
 for the said county, the — day of —, in the year one thou-
 sand eight hundred and —, who on his oath saith,

That A. O., of — in the county aforesaid, labourer, on
 the — day of — in the year aforesaid, at the township of
 — in the said county, was drunk, contrary to the Statute in
 such case made : and thereupon, he the said A. I. prayeth
 that the said A. O. may forfeit the sum of five shillings, to the
 use of the poor of the said township, as by the said Statute is
 required.

A. I.

Before me, A. M., J. P.

Summons thereupon.

County of } To A. C., one of the Constables of the
 } township of — in the said county :

[Seal.]

FORASMUCH as information upon oath hath been made
 before me, A. M., Esquire, one of His Majesty's Justices of
 the Peace for the said county, that A. O., of — in the said
 county, labourer, on the — day of —, in the year one
 thousand eight hundred and —, at the township of — in
 the county aforesaid, labourer, was drunk, contrary to the
 Statute in such case made : These are therefore to require you
 to summon the said A. O. to appear before me, at — in the
 said county, on the — day of — aforesaid, to answer unto
 the said information, and to show cause why the penalty of five
 shillings should not be levied on the goods of him the said
 A. O., for the said offence ; and be you then there to certify
 what you shall have done in the premises. Given under my
 hand and seal, the — day of —, in the year aforesaid.

A. M., J. P.

For a Form of Conviction, see the General Form under
 the Title,—Conviction. If the Justice convicts on his own
 view, the Information and Summons are needless, and the Form
 may be thus :—

County of } Be it Remembered, that on the — day of
 —, in the year of our Lord one thousand
 eight hundred and —, at the township of —, in the
 county of — aforesaid, I, A. M. Esquire, one of His
 Majesty's Justices of the Peace for the said county, personal-
 ly saw one A. O. of the township of —, in the said county,
 labourer, drunk, contrary to the form of the Statute in that case
 made and provided : Whereupon it is considered and adjudged
 by me the said Justice, that the said A. O. be convicted, and
 he is by me, accordingly, hereby convicted of the offence of
 being drunk, upon my own view as aforesaid, according to the
 form of the Statute in that case made and provided : And I do
 hereby adjudge, that the said A. O., for the said offence, hath
 forfeited the sum of five shillings, to be paid and distributed as
 the law directs. In witness whereof, I the said Justice, to
 this present conviction have set my hand and seal, the day and
 year above written.

[Seal.]

A. M., J. P.

NOTE. By the English Statute on this subject, to which
 ours is in general similar, it is provided, that if the party does
 not pay the penalty to the Church Wardens, within one week
 after conviction, a warrant of distress shall issue ; and there,
 accordingly, the practice is, after conviction, to send out a
 warrant to the Church Wardens, to demand the penalty, and if
 on the expiration of the week, it is returned unsatisfied, the
 warrant of distress is issued. As our Statute does not allow
 any time after conviction for making payment, it would seem,
 that a similar warrant to the Overseers of the poor to demand
 payment, is not requisite. However, as in our Statute the
 words "on neglect or refusal to pay," seem to imply that some
 notice of the conviction should be given to the party, or some
 demand of the penalty made upon him, before issuing the war-
 rant of distress, it will probably, in the case of his not being
 present at the time of the conviction, be the best and safest
 course, to send out a warrant in the following form to the Over-
 seers of the poor. If, however, the Justice convicts on his
 own view, or, if where the proceeding is by information, the
 party is present at the time of the conviction, the Justice will
 of course inform him of his being convicted, and will require
 payment of the penalty, and in both such cases, the warrant to
 the Overseers will be unnecessary, but on neglect of immediate
 payment after conviction, the warrant of distress may issue.

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Warrant to the Overseers of the Poor, to demand the Penalty, in the Case of the Offender not being present at the time of the Conviction.

County of } To the Overseers of the Poor of the Town-
ship of — in the said County.

[Seal.]

FORASMUCH as A. O. of —, of the township of — in the said county, labourer, is convicted before me A. M., Esquire, one of His Majesty's Justices of the Peace for the said county, for that he the said A. O., on the — day of — in the year of our Lord one thousand eight hundred and —, at the township of — in the said county, was drunk, contrary to the Statute in such case made; whereby he hath forfeited the sum of five shillings, to the use of the poor of the said township: These are therefore to require you to demand and receive of and from him the said A. O., the said sum of five shillings, to be by you accounted for, to the use aforesaid: And if he shall refuse or neglect to pay the same, on such demand made, that then you certify to me such refusal and neglect, to the end that such proceeding may be had thereupon, as to justice doth appertain. Given under my hand and seal, the — day of —, in the year above written.

A. M., J. P.

If the penalty is not paid on demand, the Overseer must return the above warrant to the Justice, with a certificate or affidavit thereon, of non payment.

Warrant to levy the Penalty of Drunkenness, on non-payment.

County of } To A. C., one of the Constables of the town-
ship of — in the said County.

[Seal.]

WHEREAS A. O., of the township of — in the county aforesaid, labourer, was on the — day of —, in the year of our Lord one thousand eight hundred and —, convicted before me, A. M., one of His Majesty's Justices of the Peace for the said county, for that he the said A. O., on the — day of —, in the year aforesaid, was drunk, at the township of — in the county aforesaid, by which he hath forfeited the sum of five shillings: and whereas it duly appears to me the said Justice, that the said sum of five shillings hath been duly demanded of and from the said A. O., but that he the said A. O. hath neglected to pay the same, and that the same is

not yet paid : These are therefore to command you forthwith to levy the said sum, by distraining the goods of him the said A. O. ; and if within the space of six days next, after such distress by you taken, the said sum, together with reasonable charges for taking and keeping the said distress, shall not be paid ; that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay the said sum of five shillings to the Overseers of the poor of the said township of —, for the use of the poor of the said township, rendering to him the said A. O., the overplus upon demand, the necessary charges of taking, keeping, and selling the said distress, being first deducted. And if the said A. O. be not able to pay the said sum of five shillings, and sufficient distress cannot be found whereon to levy the said sum, that you certify the same to me, together with the return of this warrant. Given under my hand and seal, this — day of —, in the year above written.

A. M. J. P.

Certificate by the Constable of want of Distress, to be indorsed on the Warrant.

County of } A. C., one of the Constables of the township
 } of — in the said county, maketh oath this —
 day of —, in the year within written, before me the Justice
 within mentioned, that he hath made diligent search for, but
 doth not know of, nor can find any goods of the within men-
 tioned A. O. whereon to levy the within sum of five shillings.

A. C.

Before me, the said Justice, A. M. J. P.

Commitment to the Stocks for Drunkenness, on inability to pay the penalty.

County of } To A. C., one of the Constables of the
 } township of — in the said county :

[Seal.]

WHEREAS A. O. of the township of —, in the said county, labourer, was on the — day of —, in the year of our Lord one thousand eight hundred and —, convicted before me, A. M. one of his Majesty's Justices of the Peace for the said county, for that he the said A. O., on the — day of —, in the year aforesaid, was drunk, at the township of — in the said county ; whereby he hath forfeited the sum of five shillings. And whereas it duly appears to me, that the said A. O. is not able to pay the said sum of five shillings : These

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are therefore to require you in His Majesty's name, to set him the said A. O. in the stocks, there to remain for the space of — hour . Given under my hand and seal, the — day of —, in the year above written.

A. M. J. P.

DUTIES, see REVENUE.

DYKES.

By the 6 & 7 G. 3, c. 1. 1 V.122, Persons who shall be lawfully convicted of unlawfully and maliciously breaking down, or cutting down, the bank or banks of any river, or any sea bank or dykes, whereby any lands shall be overflowed, or damaged, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

Sec. 2. If any person shall unlawfully cut off, draw up, or remove and carry away any piles, or other materials which are driven into the ground, and used for the securing any marsh lands, or sea walls, banks or dykes, in order to prevent the lands lying within the same from being overflowed and damaged, it shall be lawful for any two Justices of the Peace residing near the place where the offence was committed, and they are required, upon complaint or information upon oath of such offence, to summon the party complained of, or to issue their warrant to apprehend and bring before them the person so accused, complained of, or suspected, and upon his or her appearance, or neglect to appear, to proceed to examine the matter of fact with which he or she is charged, and upon due proof thereof made, either by his or her confession, or upon the oath of one credible witness or more, to convict such offender ; and every person offending herein, and so convicted, shall forfeit and pay the sum of twenty pounds ; one half thereof to the informer, and the other half to the Overseers, of and for the use of the poor of the township or place wherein such offence was committed ; the same to be levied by distress and sale of the offender's goods and chattels, together with the charges of such distress and sale, rendering the overplus (if any be,) to the owner or owners thereof ; and for want of sufficient distress, the said Justices are required to commit the person or persons convicted as aforesaid, to the house of correction, or common gaol of the county, town, or place where

the offence was committed, there to remain and be kept at hard labour for the space of six months. *Perpetual.*

Directions.

With regard to the offence described in the first clause of the foregoing Act,—of cutting or breaking down dykes or banks, the course of proceeding by a Justice, on complaint thereof made before him, will be the same as in other cases of felony; that is,—by taking the information on oath, issuing his warrant, examining witnesses in presence of the party charged, taking his examination, and committing him to gaol, and binding over witnesses in recognizance to appear at the Supreme Court; for directions on all which, and other points of duty on the occasion, and for the Forms requisite, see respectively, Titles,—Information; Warrant; Examination; Commitment. As this offence is a capital felony, Justices of the Peace cannot admit to bail a party charged with it, but must commit him to gaol, to take his trial in the Supreme Court.

The course of proceeding by the two Justices under the second clause of the Act, is very clearly pointed out therein: and for more particular directions concerning the same, and for the Forms required, reference must be had to the respective Titles,—Information; Summons; Warrant; Conviction; Distress; Commitment.

—●—
EELS, see FISH.

EMBEZZLEMENT, see LARCENY.

—●—
ESCAPE.

—In order to make an escape, there must be an actual arrest; and therefore, if an officer having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an escape. 1 *Burn's*, 752.

It seems to be a good general rule, that wherever any person hath another lawfully in his custody, whether upon an arrest made by himself, or another, he is guilty of an escape, if he suffer him to go at large before he hath discharged himself of him, by delivering him over to some other who by law ought to have the custody of him. *Id.*

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Id. 754.

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greater liberty than by law he ought to have, as to admit a person to bail, who by law ought not to be bailed, but to be kept in close custody. So if a gaoler or other officer shall license his prisoner to go abroad for a time, and to come again; this is an escape, even though the prisoner return again. *Id.*

If an officer hath arrested a man by virtue of a warrant, and then taketh his promise that he will come again, and so letteth him go, the officer cannot afterwards take him again by force of his former warrant, because he consented to his going. But if the party return, and put himself again under custody of the officer, it seems that it may probably be argued, that the officer may lawfully detain him, and bring him before the Justice, in pursuance of the warrant. But if the party arrested, had escaped of his own wrong, without the consent of the officer, upon fresh pursuit, the officer may take him again and again, as often as he escapes, although he were out of view, or shall fly into another town or county, and may bring him before the Justice, upon whose warrant he was first arrested. And it is said generally in some books, that an officer who hath negligently suffered a prisoner to escape, may retake him wherever he finds him, without mentioning any fresh pursuit; and indeed, since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason he should take any manner of advantage from it. *Id.* 753.

Retaking.

Wherever a person is lawfully arrested for any cause, and afterwards escapes and shelters himself in a house, the doors may be broken open to take him, on a refusal of admittance. *Id.* 754.

Breaking open doors.

It seems to be generally agreed, that a *voluntary* escape suffered by an officer, amounts to the same kind of crime, and is punishable in the same degree as the offence of which the party was guilty, and for which he was in custody, whether it be treason, felony, or trespass. And for a *negligent* escape of a criminal, actually in his custody, the officer is punishable by fine and imprisonment, according to the quality of the offence. *Id.* 755.

Warrant to Apprehend a Person for Escaping from the House of Correction.

County of } To A. C., one of the Constables of the
 } Township of — in the said County.
 [Seal.]

FORASMUCH as I, H. keeper of the house of correction at — in the county aforesaid, hath this day made information and complaint before me A. M. Esquire, one of His Ma-

jesty's Justices of the Peace in and for the said county of —, that A. O. hath unlawfully and wilfully escaped from the house of correction at — aforesaid, and from and out of the custody of him the said I. H, the keeper thereof, before the expiration of a certain term for which he the said A. O. was ordered to be imprisoned and kept to hard labour therein. These are therefore to command you the said constable, forthwith to apprehend and bring before me, or some other of His Majesty's Justices of the Peace for the said county, the body of the said A. O., to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, this — day of — in the year of our Lord one thousand eight hundred and —

A. M., J. P.

The foregoing Form, with the slight alterations which are obviously requisite, will also serve in cases of escapes from a gaol.

EVIDENCE.

- I. OF EVIDENCE IN GENERAL.
- II. OF ADMISSIONS AND PRESUMPTIONS.
- III. OF WRITTEN EVIDENCE.
- IV. OF THE EVIDENCE OF WITNESSES.
- V. OF THE MANNER OF GIVING EVIDENCE.
- VI. OF PROCESS TO CAUSE WITNESSES TO APPEAR.

I. OF EVIDENCE IN GENERAL.

The best evidence is required.

It is a general rule in all cases, civil and criminal, that the best evidence must be given of which the nature of the thing is capable. The true meaning of this rule is, not that Courts of Law require the strongest possible assurance of the matter in question, but that no evidence shall be given, which from the nature of the thing, supposes still greater evidence behind, in the party's possession or power; for such evidence is altogether insufficient, and proves nothing, but carries with it a presumption contrary to the intention for which it is produced. Thus, if a party offer a copy of a deed or will, where he is able to produce the original, this raises a presumption that there is something in the deed or will, which, if produced, would make against the party, and therefore the copy in such a case is not evidence. But if he prove the original deed or will to

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he in the hands of the adverse party, who refuses to produce it, although he has received a regular notice for that purpose, or that the original has been lost, or destroyed, without his default, no such presumption can reasonably be made ; and a copy will be admitted, because then such copy is the best evidence that can be produced. 1 *Burn's*, 766.

If a deed is attested by several subscribing witnesses, the execution may be proved by one of them ; or if none of these witnesses can be produced, proof of the signature of one witness shall be sufficient. *Id.*

The common law does not require any certain number of witnesses for the trial of any crime whatever. And before a Justice of the Peace in divers cases, one witness is sufficient to convict an offender, the same being directed by special Statutes. *Id.* 767.

By P. S. 32 G. 2, c. 11. I V, 9, Wills of land shall be attested by three witnesses at the least.

An offence need not be proved precisely on the day on which it is laid to have been committed, but where a time is limited for any prosecution, it must be proved that the offence was committed within such limited time. 1 *Burn's*, 592.

It must be proved that the offence complained of was committed within the jurisdiction of the Court or Justice before whom it is tried, and where any part of a penalty sought to be recovered, is given to the township where the offence was committed, it must be proved that such offence took place within the township stated in the indictment or other proceedings. In each of such cases, if such requisite proof is not given, the defendant must be acquitted. 1 *Burn's*, 592. *Arch. C. P.* 53.

Where a guilty knowledge upon the part of a defendant is to be proved, the prosecutor is allowed to give in evidence other instances of his having committed the same offence for which he is now prosecuted. And nearly the same rule applies where it is requisite for the prosecutor to prove malice upon the part of the defendant, as former menaces, or expressions of vindictive feeling by the defendant against the prosecutor. *Arch. C. P.* 70, 71.

The subject of evidence may now be considered in a more enlarged and particular manner, and it may be classed under three heads ; Admissions or Confessions—Presumptions, and Proofs. Each of these in order will here be treated of.

II. OF ADMISSIONS AND PRESUMPTIONS.

Of Admissions in Criminal Cases.

THE admission or confession of a fact by the defendant,

renders it unnecessary for the prosecutor to prove it. This admission or confession is of four kinds. 1. Where the defendant in open court, confesses that he is guilty of the offence with which he is charged. After this a trial is unnecessary, and the Court have nothing to do but to award judgment. 2. Where the defendant, upon an indictment for a misdemeanor, yields himself to the King's mercy, and desires to submit to a small fine, which submission the Court may accept of, if they think fit, without putting the defendant to a direct confession. 3. Where the defendant upon his examination before Justices of the Peace, on a charge of any offence, admits either his guilt, or any fact which may tend to prove it at the trial. This examination must not be upon oath; if it be, the Court will not allow it to be given in evidence. Where one of three prisoners stated in the presence and hearing of the others, in his examination before the Magistrate, that he and one of the others committed the felony, and this was not contradicted by the other, still it was held that this could not be given in evidence against the other. But in all other cases, what is said in the prisoner's presence and hearing, relative to a fact within his knowledge, and which he assents to, or does not contradict, is equivalent to an admission of the fact, and may be given in evidence against him; what weight such admissions by implication should have with a jury, is another matter. 4. Where the defendant makes an admission or confession of his guilt, or of any fact which may tend to the proof of it to any other person.

Confession
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Time of con-
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All these several species of confession, to be of effect, must be voluntary. And in the case of a confession before a Magistrate, or other person, if it appear that the defendant was induced to make it, by any promise of favour, or by menaces, or undue terror, it shall not be received in evidence against him. So if the promise or menace, &c. take place previously to the prisoners being brought before the Magistrate, and the confession be before the Magistrate, the Court will in general refuse to admit the confession to be given in evidence, unless it appear that the prisoner was undeceived by the Magistrate, and cautioned by him not to expect the favour, or not to regard the menaces held out to him. But if it be a free and voluntary confession, it is receivable in evidence against him, whether it be made at the moment he is apprehended, or while those who have him in custody are conducting him to the Magistrate, or even after he has entered the house of the Magistrate for the purpose of undergoing examination. *Arch. C. P.* 75—6. 1 *Burn's*, 562.

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ceived in evidence, yet if in consequence of such confessions, any facts arise, such facts may be given in evidence. Thus, if in consequence of an extorted confession, stolen goods be found, although proof cannot be admitted of the prisoner's acknowledgment of having stolen, or put them there, yet the fact of the witness having been directed by the prisoner where to find the goods, and his having found them in the place described by the prisoner, may be given in evidence. 1 Burn's, 563.

Where a prisoner has been once induced to confess, upon a promise or threat, he may afterwards suppose it will not be of any use to deny what he has said, and therefore any subsequent confession of the same or like facts, be the distance of time what it may, cannot be admitted as evidence against him. As to what shall be considered as a threat or promise, it has been held, that a confession induced by saying, "Unless you give me a more satisfactory account, I will take you before a Magistrate," cannot be received in evidence. So also saying to the prisoner, "It would be worse for him if he did not confess," or that "It would be better for him if he did," is sufficient to exclude the confession. A confession induced by saying "Tell me where the things are, and I will be favourable to you," cannot be given in evidence. Nor where the prosecutor had said, that "He only wanted his money, and if the prisoner gave him that, he might go to the devil if he pleased." *Id.* 564.

Threats or promises.

Admissions or confessions to other persons than Magistrates, if in writing, are proved as any other written instrument, if not in writing, are proved by parol evidence of some person who heard them. In all cases the whole of the confession should be given in evidence; for it is a general rule, that the whole of the account which a party gives of a transaction, must be taken together, and his admission of a fact disadvantageous to himself, shall not be received, without receiving at the same time, his contemporaneous assertion of a fact favorable to him, not merely as evidence that he made such assertion, but admissible evidence of the matter thus alleged by him in his discharge. Also, it may be necessary to observe, that a man's confession is only evidence against himself, and not against his accomplices. *Arch. C. P.* 78.

Proving confessions.

Admissions in Civil Cases.

An admission of a fact by either party, renders it unnecessary for his adversary to prove it. The highest species of admission is that which appears upon record, and it is conclusive against the party making it. The admission of a party upon

- Oath.** oath, is of course evidence against him, as for instance, his answer to a bill in equity, or his affidavit. A deed, in which any admission is made by a party to it, may be given in evidence against him, or any person claiming under him. Also, when one deed is recited in another, this is an admission of the recited deed by all parties to the deed reciting it, and may be given in evidence as such against them, and all persons claiming under them. So a notice that a partnership is dissolved, signed by the parties, for the purpose of being inserted in a Gazette, was holden to be sufficient evidence of the dissolution, for all purposes against the parties signing it, although the partnership was constituted by deed, and consequently must have been dissolved by deed. So a party's receipt is good evidence as an acknowledgment of a payment; although it is not conclusive evidence, if it can be shewn that it originated in some imposition practised upon the party who gave it. Where the plaintiff entered an account in writing, of goods and cash furnished to the defendant from time to time, each page of which was authenticated by the defendant's acknowledgement in writing of the receipt of the contents, it was holden, that although such an acknowledgment in writing could not be given in evidence, *per se*, in respect to the cash items amounting to above forty shillings in each page, for want of receipt stamps, yet that it was competent to the plaintiff to prove, that upon calling over each article to the defendant, he admitted that he had received the same; and that the witness might refresh his memory by referring to the accounts. *Arch. on Pl. & Ev.* 344—5.
- Deed.**
- Notice in Gazette.**
- Receipt.**

NOTE. As no stamps are required in this Province, the written acknowledgments in the foregoing case, on the defendant's hand writing to them being proved, would be good evidence here of the whole of the account, for cash as well as goods.

In an action on a bill of exchange, evidence being given of an admission by the plaintiff that he had no interest whatever in the suit, the plaintiff was nonsuited. An acknowledgment of the debt by the defendant, may be given in evidence, and it is in general conclusive. But in all the before-mentioned cases, the whole of the account which a party gives of a transaction must be taken together; and his admission of a fact disadvantageous to himself, shall not be received without receiving at the same time, his contemporaneous assertion of a fact favourable to him, not merely as evidence that he made such counter claim, but as admissible evidence of the matter he thus alleged in his discharge. *Arch. on Pl. & Ev.* 346.

Confessions by Implication

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be made in the presence of a party, relative to a fact within his knowledge, and he assent to it, or do not contradict it, it may fairly be deemed equivalent to his admission of the matter asserted. So if notice to quit be personally served on the tenant in possession, and he make no objection to it, this is an implied admission that the tenancy commenced at the season of the year when the notice to quit expired. Too much reliance however, should not be placed on admissions by words, or by implication; they may have originated in a lapse of memory, or a foolish boasting in the one case, or from inadvertence in the other; and it would be wrong therefore, to conclude the parties by them. Those in writing are of a higher nature, and if by deed or record, or upon oath, they are conclusive. And it is no matter, whether the party who makes the admissions, be the person actually interested or not; it is sufficient if he be a party to the suit. Thus, a defendant may give in evidence, the declarations or admissions of the plaintiff in the suit, to defeat the action, although such plaintiff appear to be only a trustee for a third person. On the other hand, the admissions of the person actually interested, are evidence, although he be not a party to the suit. Thus, in an action by the master of a ship for freight, the declarations of the owner, for whose benefit the action is brought, are evidence for the defendant. The admissions of one of two partners, are evidence against both. So where two jointly sue or are sued, the affidavit of one may be received in evidence against both; against the one who made it as conclusive evidence, and against the other, as evidence to be left to the jury. And not only the admission of a man or his partner, but also in some cases the admission of his known and accredited agent, is evidence against him. Thus, letters written by an agent in making a contract, and which form part of the thing done, are admissible in evidence against the principal. So, if A. refer B. for information upon a particular subject to C., what C. says concerning it, when applied to by B. or his agent, has been holden to be evidence for B. in an action against A. But the letters of an agent to his principal, in which he is rendering him an account of business he has done for him, cannot be given in evidence against the principal. Even the admissions of a wife, in cases where she is to be considered the agent of her husband, is evidence against him. Thus, where it appeared that she used to transact the business at home, and purchased the articles used in the trade, her admission as to the state of the accounts between her husband and the plaintiff, who supplied her with goods to be used in the trade, were holden to be evidence against the husband. But it is only where she can be consi-

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dered as acting as his agent, that her admissions can affect him : therefore, in an action by the husband, for wages due to the wife, her admission of the receipt of the money is not evidence against him. In all other cases, however, the general rule is,—that the declarations or admissions of third persons are not evidence ; they should be called as witnesses. *Arch. on Pl. & Ev.* 346—7.

Presumptions.

A PRESUMPTION is, where some facts being proved, another follows as a natural or very probable conclusion from them. Presumptions are of three kinds : *violent* presumptions,—*probable* presumptions,—and *light* or rash presumptions, which last, however, have no weight or validity at all. If a landlord give a receipt for the rent last due, it is fair to presume from this fact, that all former rent due by the tenant, has been paid. This is a probable presumption ; for a man is supposed to receive first for debts of the longest standing. But if the receipt be in full of all demands, this fact induces a violent presumption that there are no other debts outstanding, and if the acquittance be under seal, the presumption cannot even be rebutted by evidence on the other side, because the deed is an estoppel. A right may be presumed from continued acts of ownership, or length of possession. If a man be abroad for seven years, or upwards, without being heard of, the presumption is that he is dead ; and on the other hand, if it appear that a man was alive within seven years, the presumption is that he is still alive. The intention with which an act is done, must necessarily be the subject of presumption, and must be presumed either from the nature of the act itself, or from other facts and circumstances connected with it. It shall not however be presumed that a man has any notice or knowledge of the contents of a deed, merely from the fact of his having attested the execution of it by another person. So a loan of money from A. to B. cannot be presumed, from the bare fact that A. delivered a sum of money to B. which he had borrowed of another ; for where money is paid, the presumption is that it is paid in liquidation of an antecedent debt, and not by way of loan. *Arch. on Pl. & Ev.* 348 to 353.

Intention.

Circumstantial evidence.

On an indictment for larceny, proof that a part of the stolen goods have been found upon the person of the prisoner, or in his house or possession, is presumptive evidence against him of his having stolen them, so as to call upon him for his defence ; and may be sufficient to convict him, if no facts appear in evidence to repel that presumption. The goods are

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sometimes found in the prisoner's house before his apprehension, frequently found afterwards ; and there can be no objection to proof of their being found at one time or the other. This kind of evidence is frequently strengthened materially by other circumstances, as by proof that about the time of the offence, the prisoner was near the spot from which the goods were taken, or that he gave some false account respecting the goods on being charged with the crime, or endeavoured to conceal them, or perhaps tried to prevent an inspection ; or by some other proof of suspicious circumstances in his behaviour. On the other hand, the inference arising from the mere fact of possession, will be much weakened, if any considerable time has elapsed between the loss of the property and the finding of it again ; or if the property was from its nature, likely to pass in the interval through many hands ; especially where the prisoner betrayed no appearance of guilt at the time of his apprehension. So it is of a deed of feoffment, if all the witnesses to the deed be dead ; then violent presumption, which stands for a proof,—is continual and quiet possession. Also, the deed may receive credit from a comparing of seals, writing, and the like. 1 *Burn's*, 766—7.

II. OF WRITTEN EVIDENCE.

Acts of Parliament.

GENERAL Acts of Parliament are not, correctly speaking, the subject of proof in any Court of Justice, for being the law of the land, they are supposed to be known to every man, and are binding upon every subject, and Judges are bound to take judicial notice of their contents. But private Acts of Parliament, not concerning the public, but which relate only to particular classes of men, or to certain individuals, are not considered as *laws*, but *facts*, and therefore must be proved like other records which concern private rights. 1 *Burn's*, 768.

Of Records.

RECORDS are the memorials of the proceedings of the Legislature, and of the King's Courts of Justice, and they are considered of such authority, that no evidence is allowed to contradict them. But *copies* of them must be proved by witnesses, and then are good evidence ; but a copy of a copy is no evidence. Copies of records may be,—under seal, and—*not* under seal. Those under seal, are called *exemplifications*, which are of two kinds ; under the Great or broad seal, and

under the seal of some other Court, and they are both good evidence. Such copies of records as are not under seal, must be sworn copies, or office copies. The sworn copy should contain the whole of the record. An office copy, authenticated by a person appointed for that purpose, is good evidence of the contents of the original, without any proof of its being an examined copy. But where the officer of the Court is only entrusted with the copy of records, and is not authorised to make out a copy, he has no more authority for that purpose than a common person, and the copy must be proved in a strict and regular mode. Copies of records are to be proved as other transcripts, by a witness who has compared the copy, line for line, with the original, or who has examined the copy while another person read the original. And it ought to appear that the original came from the proper place of deposit, or out of the hands of the officer in whose custody the records were kept. 1 *Burn's*, 769.

By the 21 G. 3, c. 2. 1 V. 222, The transcript or copy of any vote or proceedings of His Majesty's Council, relating to titles of lands, attested as a true copy, and signed by the Clerk of the Council, shall be received as legal evidence in any Courts within the Province. *Perpetual*.

Verdict.

No Verdict shall be given in evidence, but between those who were parties or privies to it, because otherwise a man would be bound by a decision who had not the liberty to cross examine. And a verdict will not be admitted in evidence without likewise producing a copy of the judgment founded upon it, because it may happen that the judgment was arrested upon a new trial granted. But this rule doth not hold in the case of a verdict on an issue directed out of Chancery. *Id.* 769.

Judgment.

A judgment by the Sessions, discharging an order of removal, (not for defect of form, but upon the merits,) is conclusive, as between the contending parishes, that the settlement of the pauper was not in the appellant parish at the time of the removal, but it is binding only on these parishes, not on a third parish. An order of removal executed, and not appealed against, is conclusive of the pauper's settlement at the time of the order, even as between third parishes, who were not parties to that order. And a judgment by the Sessions, confirming an order of removal, is conclusive upon the appellant parish, as to all the world, and may be given in evidence against them by a third parish, on any subsequent appeal. Here it may be observed, that the party against whom the judgment was pronounced, had an opportunity of discharging themselves, by proving the liability on a third parish. *Id.* 769.

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And note, whenever a matter comes to be tried in a collateral way, the decree, sentence, or judgment of any Court ecclesiastical, or civil, having competent jurisdiction, is conclusive evidence of such matter ; and in case the determination is final in the Court of which it is a decree, sentence, or judgment, such decree, sentence, or judgment, will be conclusive in any other Court, having concurrent jurisdiction. *Id.* 770.

There are also public matters that are not records, as *transactions in Chancery*, and of these copies may be given in evidence. A bill in Chancery will not be evidence, except to shew that such a bill did exist, and that certain facts were in issue between the parties, in order to introduce the answer, or the depositions of witnesses. It is not to be admitted as evidence in Courts of law, to prove any facts either alleged or denied in the bill. Answers in Chancery, are confessions on oath, and therefore strong evidence against the party who makes them. When an answer is read, all the parts must be taken together, connected and entire. *Id.* 770.

Proceedings
in Chancery.

A mere voluntary affidavit may be read against the person who made it, and it must be proved to be sworn. But if it be only proved to be signed by the party, it will be evidence as a mere writing. But if it were an affidavit in any cause, then proof of the cause depending, and the using of the affidavit, would perhaps be evidence upon an indictment for perjury. The copy of a voluntary affidavit cannot be given in evidence. *Id.* 770.

Affidavits.

Depositions of witnesses in a suit in Chancery, may be read when the witness is dead, but not when the witness is living ; for whilst the witness is living, they are not the best evidence the nature of the thing is capable of. Also, when a witness cannot be found after strict enquiry, his deposition may be read. Or if it be proved that a witness was subpoenaed and *fell sick by the way*, the deposition is the best evidence that can be had. But if the witness is in a state to be produced, his deposition cannot be received. It is a general rule, that a deposition cannot be given in evidence against any person who was not party to the suit ; and the reason is,—because he had not liberty to cross examine the witness. For this reason, depositions in Chancery shall not be read for or against the defendant, upon an information or an indictment, for the King was no party to the suit. Yet this rule admits of some exceptions, as particularly in all cases where hearsay and reputation are evidence ; and in such case, depositions are admissible in evidence, in a suit between other parties, provided they have not been made after the suit was commenced. But if the question at issue is precisely the same in both suits, the depositions in the former suit cannot be admitted. *Id.* 770.

Depositions
of Witnesses.

A deposition taken in a cause between other parties, will be admitted to be read, to contradict what the same witness swears at a trial. *Id.* 771.

Conviction.

A conviction in a Court of criminal jurisdiction, is conclusive evidence of the fact, if it comes collaterally in controversy in a Court of civil jurisdiction; yet an acquittal in such Court is no proof of the reverse. *A copy of a conviction* for killing game, was agreed to be evidence, in bar of an action brought for the same offence, and the defendant is entitled to such copy. *Id.* 771.

Probate of a Will.

A copy of the probate of a will is good evidence, where the will itself is of chattels: for there the probate is an original taken by authority, and of a public nature; but the probate of a will, devising real property, is not evidence of the contents of the will, even though the original is proved to be lost. In a case where it was proved that a will of lands had been lost, parol evidence of its contents was thereupon received from a witness who heard it read over before the testator's family on the day of his funeral. The probate of a will is not conclusive evidence of its validity, on an indictment for forgery of the will. An examined copy of the probate of a will is evidence of the person there named being executor, as the probate is an original, taken by authority, and of a public nature, but a copy of the will would not be evidence of that fact. *Id.* 771.

Copies of Records.

Generally, wherever an *original* is of a *public* nature, and would be evidence if produced, an immediate sworn copy thereof will be evidence, as a copy of a bargain and sale; of a deed inrolled, and the like; but where an *original* is of a private nature, a copy is not evidence, unless the original is lost or destroyed. *Id.* 772.

Warrant.

On a warrant to a Constable, to distrain goods by virtue of an Act of Parliament, the Constable makes distress, and keeps the warrant: a copy of the warrant in this case will be good evidence. *Id.* 773.

Officers of Justice, &c.

If upon collateral issue it is to be proved that such an one was Justice of the Peace, baronet, or the like, common reputation is sufficient proof, without shewing the commission, or letters patent of the creation. And in the case of all Peace Officers, Justices of the Peace, Constables, &c. it is sufficient to prove that they acted in these characters, without producing their appointments. On an indictment for disobeying an order of Justices for diverting a road, it was held unnecessary to produce the commission of the peace, to prove the persons to be Magistrates who signed the order. *Id.* 773.

An inquisition, post mortem, is evidence, but not conclusive. *Id.* 773.

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The entry of the names and titles of persons in a *Church book*, either for marriages or births, is evidence ; but not conclusive of the marriage or birth of any persons, unless the identity of the person (by such entries intended,) is fully proved, and also strengthened with circumstances, as cohabitation, the allowance of the parties themselves, and the like. But a day book from whence the register is made up, was not allowed as evidence to contradict the latter, in a question of legitimacy ; for though it was insisted that one was the original entry, the other was the only register, and there cannot be two registers in one parish. *Id.* 773. Church Book.

An entry of the receipt of money by the officers of a township, from the officers of another township, of a proportion of church rates, made in a parish book, is evidence to charge the latter officers with the same proportions in future ; and another entry explaining the proportion, made on the same page, is also admissible evidence ; and the first point upon the principle that by such entry the officers charged themselves with the receipt of money. *Id.* 773.

The Gazette published under the sanction and controul of Government, is sufficient evidence of any Act of State so announced, but not of any private matters contained therein, or done by, or to the King, otherwise than in his regal capacity. The King's Proclamations, Addresses from the people to the Crown, and the like, may be proved in this manner, without a production of the proclamations or addresses themselves. Upon the same principle, the Articles of War, as printed by the King's printer, are allowed to be evidence of such Articles. *Id.* 773—4. Gazette.

An *ancient map* will be received as evidence, where it has accompanied possession, and agreed with the boundaries as adjusted by ancient purchases. If two manors are in the hands of the same person, and a map is made by him, and afterwards one of the manors is conveyed to another person, and then, at a distant time, disputes arise as to the boundaries, the map so taken will be evidence ; but if the person under whose direction the map was taken, was possessed of only one manor, the map so taken is not evidence against the rights of persons not parties to the making of it. *Id.* 775.

It has been determined, that where a pregnant woman died after examination, but before an order of filiation, such examination taken under the Statute 6 G. 2, c. 31, was admissible evidence on an application to the Quarter Sessions to make an order of filiation on the putative father ; and that, if not contradicted, it ought to be considered as conclusive. *Id.* 776.

Rule as to
depositions of
deceased
Witnesses.

NOTE. The like examination taken under our Provincial Statute concerning bastards, will of course, it is presumed, be evidence under similar circumstances.

The general rule respecting the admissibility of depositions after the death of the witness, is, that they are not evidence, unless they have been taken judicially, and unless the party whose interests would be affected by them, had an opportunity of being present, and cross-examining the deponent. It is therefore now clearly established, that the *ex-parte* examination of a pauper, concerning his settlement, taken on oath before a Magistrate, is not admissible upon a question of settlement, as evidence against the appellant parish. The objection is, that such examination is obtained at the instance of Overseers, whose parish would be benefitted by the removal, and behind the backs of the appellants, who received no notice of the proceeding, and had not the benefit of a cross examination. *Id* 777.

As to the examinations taken before Justices of the Peace, under the Provincial Statute relating to persons brought before them under charges of felony, see Title—Examination.

Deeds.

In cases where writings have been lost by burning of houses, by rebellion, or when robbers have destroyed them, or the like, the law in such cases of necessity allows them to be proved by witnesses. 1 *Burn's*, 777.

By the 12 G. 3, c. 5. 1 V. 174, The registry or record of any deed which has been lost, shall be allowed to be good evidence in any Court of Law or Equity, upon proof being made of the loss of the original. *Perpetual*.

Deed in possession of the
adverse party.

If a man destroy a thing that is designed to be evidence against him, a small matter will supply it; and therefore the defendant having torn his own note signed by him, a copy sworn was admitted to be good evidence to prove it. So also, where a person was indicted for forging a note, which he afterwards got possession of and swallowed; parol evidence was permitted to be given of the contents of the note, and being destroyed, no notice was given to produce it. Where *the defendant himself has the deed*, which concerns the lands in question, and refuses (after notice) to produce it, a copy thereof will be permitted to be given in evidence, on its being proved to be a true copy. And if the party has no copy, he may produce an abstract, nay even give parol evidence of the contents; because in such case it may be impossible to give better evidence. In *civil* causes, the Court will sometimes oblige parties to

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produce evidence, which may prove against themselves, or leave the refusal to do it, (after proper notice,) as a strong presumption to the Jury. But in a *criminal* or *penal* cause, the defendant (it has been said,) is never forced to produce any evidence, though he should hold it in his hands in Court. However, it has since been solemnly decided, that there is no difference in this respect between criminal and civil cases; that in both, parol evidence may be given of the contents of a paper in the defendant's possession, on his refusing to produce it, after notice, for that purpose, and that a notice given to the defendant's agent or attorney is sufficient. *Id.* 777.

Where the deed has been destroyed by fire, a copy may be read in evidence; and if the party have no copy he may read an abstract, or may give parol evidence of the contents. *Id.**

Deed destroyed.

Every deed should regularly have the seal of the party, but where an indenture was offered in evidence, the seals being torn off, and it being proved to have been done by a little boy, it was allowed to be read. To prove the taking of an oath, a certificate was produced that had only a small piece of wax upon it, and the Judge said, if it were sealed, though the seal were broken off, yet it may be read, and he added, that he had seen an administration given in evidence, after the seal broken off; and so of wills and deeds. Sealing is essential to a deed, but it is not material with what seal it is sealed. Any number of parties may use the same seal, but must make distinct and separate prints. *Id.* 778.

Sealing essential to a deed.

If a deed be in existence, and in the power of the party, its execution must be proved by a subscribing witness; to which rule however, there are some exceptions. If a deed be thirty years old, it may be given in evidence without any proof of the execution of it; however, there ought to be some account given of the deed, where found, &c., and if there be any blemish in the deed, by rasure or interlineation, the deed ought to be proved, though it were above thirty years old, by the witnesses if living, and if they are dead, by proving the hands of the witnesses, or at least one of them, and also the hand of the party, in order to encounter the presumption, arising from the blemishes of the deed; and this ought more especially to be done, if the deed imports a fraud. There is no fixed rule upon this point, but a deed has often been allowed as evidence where it was but twenty-five years old. It is now settled, that the production of an instrument at the trial in pur-

Proof and admission of Deeds.

* See before, respecting the Copy of a Deed from the Registry, where the Original is lost.

suance of a notice, will not supersede the necessity of proving it by one of the subscribing witnesses, as in ordinary cases ; and this is the case with regard to wills as well as deeds. A witness need not have seen the instrument actually executed, for if the obliger of a bond sign a bond, and then tell a certain person that he had signed it, and sealed it, and bid him witness it, which he does, that is a sufficient proof of due execution. The subscribing witness alone is competent to prove the execution, because he may be able to state the time of the execution, and some circumstances of the transaction which may be material, and unknown to other persons. Subscribing witnesses are not requisite to a deed. If there be none, the handwriting of the party may be proved. If the subscribing witness be dead, it is sufficient to prove his handwriting, but it must also be proved that he is dead. In an action on a promissory note, the subscribing witness being dead, proof of his handwriting, and that the defendant was present when the note was prepared, is sufficient without proving the hand writing of the defendant. Quere, if proof of subscribing witness's hand writing alone would have been sufficient. *Id.* 779.

According to the Statute of bigamy, the presumption of the duration of life, with respect to persons of whom no account can be given, seems to end at the expiration of seven years from the time when they were last known to be living. *Id.* 780.

Proof of
hand-writing
of a Witness.

Hand writing
of a party.

Where a subscribing witness is absent in a foreign country, his hand writing may be proved. So if he be out of the jurisdiction of the Court, so as not to be amenable to its process. Strict proof is required of diligent search after an attesting witness, and without finding him, before his hand writing can be proved. If a witness be absconding from his creditors, his hand writing may be proved. So, if by some criminal act committed by him subsequently to the execution of the deed, he become incompetent as a witness in a Court of Justice. So, if he become incompetent by interest subsequently accrued. Also, where there is no subscribing witness on the deed, or where the subscribing witness denies having any knowledge of the execution, (which is the same thing as if there were no witness at all,) and the same in the case of a promissory note ;—or where the name of a fictitious person is inserted ; or where the attesting witness was interested at the time of the execution of the deed, and continues so at the time of the trial ;—or where the person who has put his name as a subscribing witness, did so without the knowledge or consent of the parties. In these cases, the execution may be proved, by proving the hand writing of the party to the deed ; or by any person pre-

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Calling Attest-
ing Witness.

A subscribing witness to any instrument, is compellable to give evidence respecting it ; for the person by subscribing his name, undertakes to give evidence at a proper time and in a proper manner. *Id.* 781.

Evidence relative to the Contents of Deeds.

EVIDENCE may be received to explain deeds where there is a *latent* ambiguity. By a *latent* ambiguity is intended, that which does not appear upon the face of the instrument, where every thing seems right and clear : but the meaning being rendered uncertain by the proof of some fact, the law permits the removal of the doubt by the like evidence. As where there was a devise to her cousin I. C., and there were two of that name, evidence was admitted to show which of the two was meant. So where from the terms of the deed, its intent as to its nature is equivocal : for instance, whether it is to enure as a contract of apprenticeship, or only as an agreement to be a mere servant, evidence is admissible to show the intent of the parties, and that some act was done further than that stated in the deed, though forming a part of the same transaction. But parol evidence cannot be admitted to contradict the terms of a deed ; as in case of a lease, to shew that the lessee is to pay a given sum to a ground landlord ; the lease only stipulating for payment of a sum certain to the lessor. In cases of fraud, it is different ; as where the party is imposed upon at the time of making the deed ; where one sum is fraudulently substituted for another, and where part of the real consideration is omitted ; there parol evidence of the fact may be received. A party may prove other considerations than those expressed in the deed. Although parol evidence cannot be admitted to vary a written contract, yet it may be shewn whether a contracting party is

Fraud.



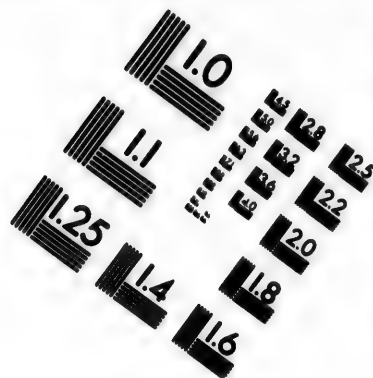
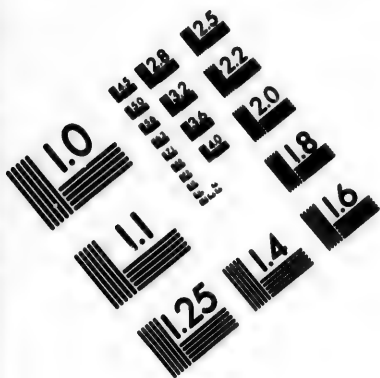
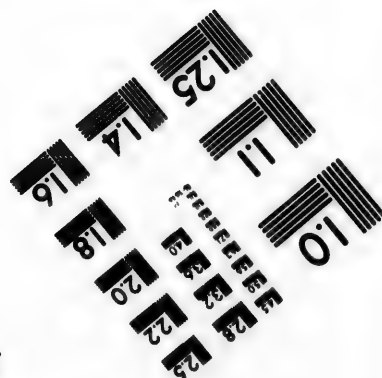
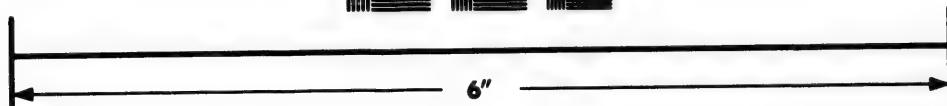
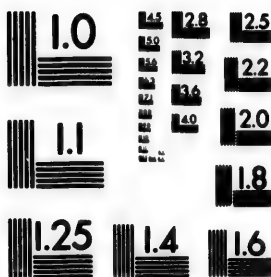


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agent or principal, and for this purpose the broker is a competent witness. *Id.* 781.

Entries.

THE other division of that class of evidence relative to private writings, consists of entries in books, memoranda, and some particular cases, which are allowed, from their own peculiar nature, to be received as evidence, as inscriptions, almanacks, &c.

Tradesman's
Book of Ac-
counts.

By the 11 G. 3, c. 10. 1 V. 168, No tradesman, or handicraftsman, or his executors or administrators, shall be allowed to give his shop book in evidence in an action for money due for wares delivered, or for work done, above two years before the action brought, except he or they shall have obtained a bill of debt, or obligation of the debtor for the debt, or shall have brought against the debtor, his executors or administrators, some action for the said debt, wares, or work done, within two years next after the same wares delivered, money due for wares delivered, or work done. Provided, that nothing contained in the Act shall extend to mutual trading between merchant and merchant, merchant and tradesman, or between tradesman and tradesman." *Perpetual.*

But though the Statute says that the shop book shall not be evidence after the two years, yet it is not of itself evidence within the two years, except under particular circumstances. 1 *Burn's*, 782.

A man's book of accounts is no evidence for the owner of the book, but for the adverse party; for his book cannot be of better credit than his oath, which would not serve in his own case. *Id.*

Entries in
Books.

There are however cases in which entries made in books by the agents of persons, who formerly stood in the situation in which the parties calling for the evidence stand, are admitted as evidence to prove what those agents would have proved, had they been living at the time of trial. And the rule which determines the admissibility of such evidence, is,—that the persons making such entries, must by making them, charge themselves with a debt, or discharge others of a debt due to themselves; in other words, the entry must be against their own interest. Thus, to prove the fact of a surrender of an interest in an estate, the books of the attorney since deceased, who had made an entry of having prepared the writings, and of the charge for the same, as due to himself, and then *an entry that they were paid*, were determined by the Court to have been properly admitted in evidence. So, to prove the real time of ex-

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ecuting a lease to have been different from its actual date; an attorney's entry of charges by himself of making the lease, and of payment of those charges, was admitted as good evidence. In these cases, the entries were admitted upon the ground that there was a total absence of interest in the persons making them to pervert the fact; and at the same time a competency in them to know it. So a written memorandum by a deceased man-midwife, stating that he had delivered a woman of a child on a certain day, and referring to his ledger, in which a charge for his attendance was marked as paid, was thought by the Court of K. B. to have been properly received in evidence, upon an issue as to the child's age. On a question whether a testator at the time of making his will, was of full age, a written memorandum by his deceased father, stating the time of his birth, has been admitted to be good evidence. It is said indeed to have long been an established principle of evidence, that if a party who has knowledge of the fact, make an entry of it, whereby he charges himself, or discharges another upon whom he would otherwise have a claim, such entry is admissible evidence of the fact, because it is against his own interest. 1 *Burn's*, 782—3.

But entries by a third person, deceased, in his books of receipts of rent from his tenant for a particular estate, are not admissible to prove the identity of the land, in a cause between two others. Evidence of this kind, can only be admitted to *restrain*, not to *advance* the interest of the party who makes it. What a man does in his closet, ought not to affect the rights of third persons. The general rule is, that a man cannot make evidence for himself. *Id.* 784.

The examination of an almanack, that such a day of the month was Sunday, is sufficient. A copy of an inscription on a grave stone, has been allowed to be given in evidence: and recitals in family deeds, engravings on rings, old pedigrees hung up in a family mansion, and the like, are all of them admissible, upon the principle that they are the natural effusions of a party who must know the truth, and who speaks upon an occasion when his mind stands in an even position, without any temptation to exceed or fall short of the truth. *Id.* 784.

Handwriting.

As relating to the evidence of written instruments, the mode of proving the handwriting of an individual is now proper to be considered. In general cases the witness should have gained his knowledge from *having seen the party write*, but under some circumstances that is not necessary; as where the

Similitude of
Hand writing.

handwriting to be proved is of a person residing abroad ; one who has frequently received letters from him in a course of correspondence, will be admitted to prove it, though he has never seen him write. It is not necessary that a witness should swear that the writing intended to be given in evidence, is actually the handwriting of any particular individual, but his belief that it is such, is sufficient. This belief must be founded upon rational grounds ; either he must have seen the individual in question often write his name, or have received letters from him in a course of correspondence, not having actually seen him write. But he is to form his opinion merely and only from looking at the handwriting in question. It seems to be generally holden since the reversal of the attainder of Algernon Sidney, that similitude of hands is not evidence in any criminal case, whether capital or not capital. The true distinction seems to have been taken in a case where the defendant being indicted for publishing a written libel, a person from the Post Office, who had never seen him write, being called as a witness, the learned Judge permitted the witness to give *general* evidence that the writing appeared to be in a feigned hand ; but when the witness was asked, whether, on comparing such handwriting with papers proved by others to be the genuine handwriting of the defendant, he could say it was the disguised hand of the same person, his lordship rejected the evidence attempted to be introduced by such examination, because it arose only from comparison of hands. 1 *Burn's*, 784—5.

III. OF THE EVIDENCE OF WITNESSES.

Incompetency

PREVIOUSLY to admitting a witness to be sworn, it is often necessary to examine him upon what is termed the *voir dire*, which is done for the purpose of ascertaining, whether there be any objection in law to his being admitted as a witness upon the case before the Court ; and such an objection is valid for that purpose, when it appears in the course of the examination, that the witness is incompetent to give evidence, by reason of some civil disability, or by reason of his being directly interested in the event of the cause at issue. But if it is discovered during any part of the trial, that a witness is interested, his evidence will be struck out. And upon this examination of a witness as to his situation, he may be asked any questions concerning instruments he has executed, &c., without producing those instruments. It is a rule, that when the objection to the competency of a witness, arises from his answer to a question on the *voir dire*, that he may in the same way do away the objection, and restore himself by parol ; but if the fact ap-

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pear in any other way, as if the witness is proved by other evidence to have been a bankrupt, in such case it is necessary to answer the objection by the best evidence, that is, by production of the certificate itself. It is to be observed, that there be many circumstances that disable a juror, that are not sufficient exceptions against a witness. Thus, the exception of kindred is a good cause of challenge against a juror, but not against a witness; therefore the father may be a competent witness for or against his son, or the son for or against his father. These, and the like exceptions, may be to the credit or credibility of the witness, but are not exceptions against his competency. It may here be observed, that the exceptions to a witness are of two kinds.—1st. To the credit of the witness, which do not at all disable him from being sworn, but yet may blemish the credibility of his testimony; and in such case, the witness is to be allowed, but the credit of his testimony is left to the jury. 2nd. To the competency of the witness, which excludes him from giving his testimony; and of these exceptions the Court is the judge. *Id.* 786.

Exceptions to
a Witness.

Husband and wife cannot be admitted to be witnesses for each other, because their interests are absolutely the same; nor against each other, because contrary to the legal policy of marriage. However, there are some exceptions to this rule, and among these, are cases where from necessity, a wife *de jure*, may be a witness against her husband, for a personal tort done to herself. On an indictment against him for beating her, she has been admitted to give evidence against him. So also for his assisting to commit a rape upon her. The wife is always allowed to exhibit articles of the peace against her husband; and the Court will not receive affidavits on the part of the husband, to contradict the truth of the articles exhibited against him, and prevent his giving surety. On the trial of a man for the murder of his wife, her dying declarations are evidence against him. *Id.* 787.

Husband and
Wife.

Want of discretion is a good exception against a witness; on which account alone, it seems that an infant may be excepted against. But if an infant be of the age of fourteen years, he is, as to this purpose, of the age of discretion to be sworn as a witness; and even if under that age, yet if it appear that he hath a competent discretion, he may be sworn. And in many cases an infant of tender years may be examined, where the exigence of the case requires it; which possibly being fortified with concurrent evidences, may be of some weight: especially in cases of such crimes as are practised upon children. In one case it has been agreed by all the Judges, that children of any age may be examined on oath, if

Want of Dis-
cretion.

capable of distinguishing between good and evil ; but that they cannot be examined in any case without oath. *Id.* 789.

Lunatics.

Lunatics, and other persons who are subject to temporary fits of insanity, may be witnesses in their lucid intervals, if they have sufficiently recovered their understandings. And a person deaf and dumb, is not on that account incompetent, but if he have sufficient understanding may give evidence by signs,

Infidels.

with the assistance of an interpreter. Infidels cannot be witnesses ; that is, such who profess no religion that can bind their consciences to speak truth. But when any person professes a religion that will be a tie upon him, he shall be admitted as a witness, and sworn according to the ceremonies of his own religion ; for it would be ridiculous to swear a person upon the Holy Evangelists, who did not believe those writings to be sacred. Thus, Jews are always sworn upon the Old Testament ; Mahometans on the Koran ; a Scotch Covenanter is permitted to swear by holding up his hand. For oaths are to be administered to all persons according to their own opinions, and as it most affects their consciences. The particular opinions of a man professing the Christian religion are not to be examined into, but he is merely to be asked if he believes in God, the obligation of an oath, and a future state of rewards and punishments. But a person who has no idea of the being of a God, or a future state, is not admissible. *Id.* 790.

Quakers.

By the 33 G. 2, c. 2. 1 V. 48, Quakers shall, instead of an oath in the usual form, be permitted to make their solemn declaration, or affirmation, in these words, to wit,—

“ I, A. B. do solemnly, sincerely, and truly declare and affirm.” Which solemn affirmation shall be of the same force and effect as if such Quakers had taken an oath in the usual form. Provided however, that no Quaker, or reputed Quaker, shall be admitted to give evidence in any criminal causes by such solemn declaration or affirmation. And provided also, that no persons shall be deemed Quakers within the intention of the Act, unless they shall affirm in the form before directed, that they are Quakers, and have been so for one year then last past. *Perpetual.*

It will be observed, that the affirmation allowed by this Act, only relates to civil causes. In criminal causes, no Quaker shall be allowed to give evidence except upon oath.

Judge or Juror.

It seems agreed, that it is no exception against a person's giving evidence either for or against a prisoner, that he is one of the Judges or Jurors who are to try him. But where a Juror is called upon to give his evidence, he ought to give it upon oath, openly in Court, and not be examined privately by his companions. 1 *Burn's*, 790.

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It is no exception against a witness, that he has confessed himself guilty of the same crime, if he has not been indicted for it. Although however, an accomplice is a competent and admissible witness, yet if there be no other evidence to corroborate his testimony, neither Juries nor Judges incline to convict a prisoner upon it. For he that declares himself guilty of an infamous crime, and wants only an attainder of it to render him totally incompetent, deserves only little credit. And the hopes he may have of earning his own pardon, or of being excused from prosecution and punishment, by giving such testimony, is a further reason for suspecting his testimony. The practice therefore, is to advise the Jury to regard the evidence of an accomplice, only so far as he may be confirmed in some part of his testimony by unimpeachable testimony. It is not necessary that he should be confirmed in every circumstance which he details in evidence, for there would be no occasion to use him at all as a witness, if his narrative could be completely proved by other evidence free from all suspicion. Nor need it appear from the confirmatory evidence, that he speaks truth with respect to all the prisoners, or with respect to the share which each had in the transaction. But if the Jury are satisfied that he speaks truth in those parts in which they see unimpeachable testimony brought to confirm him, that is ground for them to believe that he also speaks truly with regard to the other prisoners, as to whom there may be no confirmation. Also, it has often been adjudged, that such of the defendants in an information against whom no evidence is given, may be witnesses for the others. It has been also adjudged, that where three persons are sued in three several actions on the Statute; for a supposed perjury in their evidence concerning the same thing, they may be good witnesses in such actions for one another. It is no good exception against a witness, that he is an alien. It seems agreed that an attainder, judgment, or conviction of treason, felony, piracy, premunire, perjury, or forgery, and in conspiracy, at the suit of the King; and also judgment for any heinous crime to stand on the pillory, or to be whipped or branded, are good causes of exception against a witness, while they continue in force.

Accomplice.

Conviction of
Felony, &c.

NOTE. The party who would take advantage of this exception, must have a copy of the record of conviction ready to produce in Court; for until the judgment upon the verdict be regularly entered, the witness is not deprived of his legal privileges. If it be objected against receiving a person's testimony, that he has been convicted of felony, and his punishment is unexpired, such objection must be supported by the production of the record; and no admission by the party himself will

be sufficient. A person convicted of felony, who is admitted to his clergy, and burnt in the hand, is thereby re-enabled to be a witness; for the burning in the hand operates as a Statute pardon. But a mere allowance of clergy, without an actual burning in the hand, or a pardon of that punishment, does not restore the party to his credit. The King's pardon of treason, or felony, after conviction, or attainder, restores the party to his credit. A party convicted and whipped for *petit larceny*, shall not be allowed to be a witness. It is established as a rule, that *it is the crime that creates the infamy, and not the punishment of it.* 1 Burn's, 792.

Incompetency
from interest.

The remaining objection to the admissibility of a witness, is the fact of his being *interested*; respecting which it seems an uncontested rule in all cases, that it is a good exception against a witness, that he is either *to be a gainer or loser by the event of the cause*, whether such advantage be direct and immediate, or consequential only. In many criminal cases, however, from the necessity of the thing, interested persons are allowed as witnesses. As where the owner prosecutes an indictment of felony for stolen goods, he is concerned in interest, for he will be entitled to restitution, and yet his evidence is admitted. *Id.* 792.

NOTE. In this Province, persons rated, or liable to be rated for the support of the poor, are thereby incompetent, on the ground of interest, to give evidence in any suit or appeal concerning such rates in their own township, or concerning the removal of any pauper from their own township or settlement. In England it is provided by Statute, that persons rated, or liable to be rated to any rates, shall not thereby be incompetent to be witnesses on any question concerning such rates, or the settlement or removal of any poor in their township, or the boundaries of such township, or respecting bastards, or parish officers, or their accounts in such township. As this Statute does not extend here, such persons in this Province, cannot in the cases therein mentioned, be admitted as witnesses for their own township, except as to county or district rates, with regard to which, it is indeed provided by the 5 W. 4, c. 13. 4 V. 389, that persons rated, or liable to be rated to such rates, shall not thereby be incompetent to be witnesses in any question concerning such rates, under the Act." It is obvious, that a similar provision to that just cited from the English Statute, is required in this Province. Before that Statute, however, it had been decided, (and it may therefore be considered even at present as a rule in this Province,) that inhabitants are not incompetent as witnesses, merely for having rateable property in the parish, if it does not appear that such property was actually

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rated at the time of the appeal ; and this, although it was omitted in the rate for the very purpose of introducing their evidence. The Court held that in order to disqualify a witness, there must be an actual existing interest at the time, not merely one that is expectant and contingent ; and that by taking the witness off the rate, his immediate interest was so far taken away, that it could not render him incompetent, whatever objections might still be made against his credibility. 1 *Burn's*, 793.

The owner of an estate, occupied by his lessee, has a permanent interest in it, which disqualifies him from being a witness to disburthen such estate from the payment of a rate. In a case between two parishes, the *declarations* of a rated inhabitant of either parish, concerning the facts in issue, are admissible in evidence, not only against himself, but also against the other rated inhabitants of his parish. And it is not necessary, in order to make such declarations evidence, that he should first be called as a witness, and refuse to be examined. All the rated inhabitants are parties to an appeal, and therefore their declarations are evidence. *Id.* 794.

It has been decided, that if the defendant and plaintiff be willing, the defendant may have the plaintiff as a witness. One commoner may be a witness for another *claiming common*, because in effect it charges himself. A trustee may be a witness, if he have released his trust, but not if he have conveyed it over. If a trustee takes a beneficial interest, he is incompetent, but without such an interest trustees and executors are competent witnesses. An *heir at law* may be a witness concerning the title to the land ; but the remainder-man cannot, for he hath a present interest ; but the heirship is a mere contingency. Where the rights of a corporation are at issue, a member thereof may give evidence upon the same, if he have not, as a private individual, a particular interest in the question at issue. A person cannot be a witness, if he believes himself interested, whether he is or is not interested by strictness in law. But a mere obligation in honor, is no objection to the competency of a witness. A prosecutor has been admitted to be a witness, on an indictment for an assault, although he had laid a wager that he should convict the defendant ; and the reason seems to be, not because the witness had made the wager at a time when public justice became interested in his testimony, but because it would be against public policy to allow a witness by any such gratuitous act, to exclude himself from giving evidence ; and there seems to be another reason for admitting the witness, since the wager would now probably be considered absolutely void, as tending to produce an improper bias on the mind of the witness, and therefore as directly

Plaintiff a
Witness.

Trustee.

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Expectation
of Benefit.

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Evidence con-
trary to Inter-
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prejudicial to the administration of justice. It is no objection to a witness, that he *hopes or expects* a benefit. It is necessary to observe, that as an exception to the general rule, that persons immediately interested in the event of the cause, cannot be witnesses for that party whose claim if established will advance their own interest,—there is a class of cases, determining that where a person is equally interested either in the event of a verdict for the plaintiff, or defendant, he is a good witness. As for example, where one is entrusted by A. to pay money to B. and does not pay it accordingly; and then B. brings an action against A. for the amount, the agent is a good witness to prove no payment, inasmuch as he acknowledges the receipt of the money from A., and thereby renders himself liable to A. Persons who become interested *in the common course of business*, and who alone can possibly have knowledge of a fact, may be called as witnesses to prove it, as persons who have been agents employed to pay money, may prove such payment. So an agent may prove the terms of a contract, though he be to derive a profit from it. And this upon the ground of necessity. If such evidence were not admitted, the facts would be incapable of proof. Where a person made himself a party in interest, after a plaintiff or defendant has an interest in his testimony, he may not by this deprive the plaintiff or defendant of the benefit of his testimony. Upon the whole, with respect to *interest*, a man who is interested in the event of a suit, is objectionable only when he comes to prove a fact consistent with his interest, for if the evidence he is to give be contrary to his interest, he is the best possible witness that can be called, and no objection can be made to him by the party in the cause. And again, the Judges have in a variety of cases resolved, that these questions of interest shall, as far as possible, go to the credit, rather than the competency of the witness. *Id.* 795—6.

Some persons also are privileged by reason of their peculiar relationship to the party in the cause, from being compelled to give evidence. Thus, an attorney ought not to be examined against his client, because he is obliged to keep his secrets; but of his own knowledge before retainer, that is before he was addressed in his professional character, he may be examined as a witness, if served with a subpoena. This privilege only extends to prevent the disclosure of facts communicated confidentially to the witness, in the character of attorney; and therefore it has been decided, that an attorney may be examined as to the contents of a written notice which he had received in the course of the cause, calling upon him to produce papers in the hands of his clients, for by such disclosure there could be

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no breach of confidence. This is the privilege of the client, and not of the attorney. But it is confined to three cases of counsel, solicitors and attornies, when acting in their respective characters. It does not extend to the case of an agent or steward, nor of a conveyancer, nor of course to the case of medical persons.

Of examining Witnesses, and of the mode of enquiring into their Credibility.

THE several objections before enumerated, may be raised either by an examination of a witness upon the *voir dire*, (of which sufficient has been said already,) or by an examination after the witness has been sworn. Witnesses are allowed to refresh their memories by looking at memoranda made under certain circumstances. A witness may refresh his memory by any book or paper, provided he can afterwards swear to the fact from his own recollection, but if he cannot swear to the fact from recollection, any farther than as finding it entered in a book or paper, then the original book or paper must be produced; for he shall not be allowed to give evidence from a copy, or extract from it.

A witness may refresh his memory, by looking at memoranda or entries which he did not make himself, but which he regularly examined from time to time, while the entries were fresh in his recollection, and which he always found accurate. 1 *Burn's*, 797.

[NOTE. It appears to have been considered formerly in England, that a witness was not compellable to answer any question which might subject him to a civil action, or tend to charge himself with a debt; but by a Statute passed there in the 46 G. 3, the law is declared otherwise; but as that Statute is not expressly extended to the Colonies, it may probably be considered, that in this Province a witness is not compellable to answer such a question.]

On a question of settlement, a rated paishioner is not compellable by the adverse parish to give evidence, as he is directly interested as party to the appeal.

It is a general rule, that a witness shall not be asked any question, the answering to which might oblige him to accuse himself of a crime; and that his credit is to be impeached only by general accounts of his character and reputation, and not by proofs of particular crimes, whereof he never was convicted. But a witness may be asked whether he has not been in the pillory for perjury. A man shall not be permitted to swear that he was suborned and perjured. And Lord Coke says, A witness alleging his own infamy or turpitude, is not to be heard.

Questioning a
Witness as to
his Character.

A witness cannot be asked a question which has a direct and immediate effect to disgrace or degrade him. On an indictment for a rape, the woman is not obliged to answer, whether on some former occasion she had not a criminal connection with other men, or with particular individuals, nor is evidence of such criminal intercourse admissible. *Id.* 798-9.

Questions to
try Credibil-
ity.

It is not competent on cross examination, to question the witness concerning a fact wholly irrelevant to the matter in issue, if answered affirmatively, for the purpose of discrediting him if he answered in the negative, by calling other witnesses to disprove what he said. Upon cross examination to try the credit of a witness, only general questions can be put, and he cannot be asked as to any collateral or independent fact, merely with a view to contradict him afterwards by calling another witness. If the witness answers such an irrelevant question before it is disallowed, or withdrawn, his answer is conclusive. Witnesses cannot be called to contradict him. It would be irrelevant to ask a witness in cross examination, whether he had not attempted to dissuade another witness from attending the trial. A witness may object to answer a question, which he thinks will tend to his crimination, though the answer would not lead to an immediate conclusion of guilt. Where a witness swears to a particular fact, a letter written by him, contradicting in effect his testimony upon that point, may be given in evidence to impeach his credit. A witness may be examined as to what he has formerly sworn in an affidavit: but the affidavit, or an office copy of it, must be first read in Court. *Id.* 800-1.

Leading
Questions.

Leading questions, that is, such as instruct a witness how to answer on material points, are not allowed on the examination in chief. Questions however, which are intended merely as introductory, and which whether answered in the affirmative or negative, would not be conclusive on any of the points of the cause, are not liable to the objection of leading. For example, if two defendants are charged as partners, a witness may be properly asked, whether the one defendant has interfered in the business of the other. This is not a leading question, for though he may have interfered, it will not follow that he has by this alone made himself liable as a partner. Or, if a witness called to prove the partnership of the plaintiffs, is not able at the moment to specify the several names of the partners, a number of names containing those of the partners among others, may be suggested to the witness for the assistance of his memory. In a criminal prosecution it is proper, and the common practice is, to direct the attention of the witness to the person of the prisoner, and ask him, whether that is the man of whom he has been speaking. A witness swore to a particular circum-

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stance, as part of the contents of a letter, which he also swore was lost. Another witness who had heard the letter read, was permitted to be examined to the particular circumstance by a leading question, for the purpose of denying its forming part of those contents ; provided the witness's memory had been first exhausted by general questions as to the contents of the letter. In one case, the defendants intending to impeach the credit of a witness for the plaintiff, by shewing such witness to be of an infamous character, were prohibited from asking, whether from what their own witness had seen pass at Bow Street, at which place the plaintiff's witness had been before the magistrates there, he would believe him on his oath ? They were permitted to put this question,—“ Have you the means of knowing what the general character of this witness was ? And from such general character would you believe him on his oath ?” For then it would be open to the plaintiff, to ask as to the means of knowing the witness's character. Where the character of a witness has not been attacked, no evidence can be admitted in support of it. But evidence of the conduct of deceased witnesses, when it has been attacked, may be received, to attach credit to their testimony, or to destroy its effect. *Id.* 801-2.

It often happens that the character of subscribing witnesses to deeds, and other written instruments, is the subject of enquiry ; and upon this point the following cases have occurred. If the subscribing witnesses to a will be dead, evidence given of what was said by one of them, being then in bed of the illness of which he died, thereby impeaching the validity of the will, inasmuch as he declared it was a forgery, was admitted, and afterwards decided to have been rightly admitted. Such evidence being given, not to prove the forgery, but to impeach the credit of the subscribing witness. And evidence of the character of the subscribing witnesses may be admitted, if an imputation be cast upon the will. And upon the authority of the preceding case, evidence was admitted, that the subscribing witness to a bond, had in his last moments begged pardon of heaven for having been concerned in forging it. These decisions were upon the principle, that if the subscribing witness could have been produced upon the trial, to prove his handwriting, as he might have been cross-examined, so a party may prove his declaration of the fact, in contradiction to the presumption of a due execution of the bond, from the proof of his handwriting as a subscribing witness. It has been agreed that the evidence given by a witness at one trial, cannot, in the ordinary course of justice, be made use of against a defendant on the death of such witness, at another trial. But it has been admitted, that in order to shew a variance in the evidence, a

Character of
Witnesses to
Instruments.

Evidence on a
former Trial.

Contradictory
Testimony on
the same side.

deposition taken by a witness before a Justice of the Peace, may at the prisoner's desire be read at the trial, in order to take off the credit of the witness, by shewing a variance between such depositions and the evidence given in Court. And for the same reason, it seems agreed, that where a witness at one trial, varies from his own evidence at another trial, in relation to the same matter, such variance may also be given in evidence to invalidate his testimony at the second trial. But nothing shall be admitted as evidence of what was done at another trial, till the record of that trial be produced. When a witness has been once sworn to give evidence, the other party may cross examine him, though he gave no evidence for the party that called him. If a witness is called on the part of the plaintiff, who swears what is palpably false, it would be extremely hard (said Lord Ellenborough,) if the plaintiff's case should be for that reason sacrificed. The party is not to set up so much of a witness's testimony as makes for him, and to reject or disprove such part as is of a contrary tendency. But if a witness is called and gives evidence against the party calling him, he may be contradicted by other witnesses on the same side; and in this manner his evidence may be entirely repudiated. But a party shall never be permitted to discredit, by general evidence, his own witness, for that would be to enable him to destroy the witness if he spoke against him, and to make him a good witness if he spoke for him, with the means of destroying his credit if he spoke against him. The meaning of the rule, is, that a party cannot prove his own witness to be of such a general bad character as would make him unworthy of credit. If he knew the infamy of his character, he was practising a fraud upon the Court, in producing him as a witness. But if a witness unexpectedly give evidence against the party that called him, another witness may be called to prove those facts otherwise; as where the question was, whether the defendant's servant who had been employed to sell a horse, had warranted him sound, he swore on being called by the plaintiff, that he had not given any warranty, and Lord Ellenborough allowed the plaintiff to call another witness to prove, that at the time of the sale he had expressly warranted its soundness. There can be no rule of law, said Lord Ellenborough, by which the truth on such an occasion is to be shut out, and justice perverted. Objections to disqualify a witness, such as questions of interest, or description, should be taken in the first instance, before his examination in chief is gone into. *Id.* 802—3.

Hearsay and
Reputation.

In general, that which another asserts must be by oath in a Court of Justice, and no one will be permitted to come into

such Court declare a declaration that which oath that deponent into the Courts have to modern great difficulty manner, but reputation supposed another.) Thus, de missible evidence grandfather had; or as and the like better evidence pauper, of to the birth clarations of or whether marriage, a way, reputation upon the sum piece of land rations made by one of before gone that the witness died, was a *prima facie* There are still living, sumption or sumption or posed not to The law proceeds against the until the contrary by tradition reputation is this, although pecting it as so as to a bo

such Court and say, upon his oath, that he heard such an one declare certain facts to have occurred, but he who makes the declaration must himself repeat it upon his oath. And this is that which is termed hearsay evidence, viz. the deposing on oath that certain facts *are*, which facts are only known to the deponent by the relation of some other person. On enquiring into the truth of facts which happened a long time ago, the Courts have varied from the strict rules of evidence applicable to modern facts of the same description, on account of the great difficulty of proving those remote facts in the ordinary manner, by living witnesses. On this principle, hearsay and reputation (which latter is the hearsay of those who may be supposed to have known the fact handed down from one to another,) have been admitted as evidence in cases of pedigree. Thus, declarations of deceased members of the family, are admissible evidence to prove relationship, as who was a person's grandfather, or whom he married, or how many children he had; or as to the time of a marriage, or the birth of a child, and the like; of which it cannot be reasonably presumed that better evidence is to be procured. But hearsay evidence by a pauper, of the declarations of his deceased putative father, as to the birth place of the pauper, is not admissible. The declarations of deceased parents, as to whether they were married, or whether the person in question was born before or after marriage, are evidence. So in questions about a right of way, reputation, that is, what old people deceased have said upon the subject, is good evidence. So, whether a particular piece of land be parcel of an estate, may be proved by declarations made by a deceased tenant, while in possession. Proof by one of a family, that a particular person had many years before gone abroad, and was supposed to have died there, and that the witness had not heard in the family of his having married, was considered by the Court of King's Bench good *prima facie* evidence of the person's death without lawful issue. There are cases in which a person has been presumed to be still living, though not heard of for some time. But this presumption would not be made, in contravention of another presumption or principle of law, by which every person is supposed not to have acted illegally, until the contrary is proved. The law presumes the continuance of life, but it also presumes against the commission of crimes, and that even in civil cases, until the contrary be proved. A general right may be proved by traditionary evidence, a particular fact cannot. Traditionary reputation is evidence of boundary between two parishes, and this, although the deceased old persons, whose declarations respecting it are given in evidence, were parishioners. But not so as to a boundary between two estates.

Declarations made by persons after a suit commenced, are not admissible as evidence of reputation. *Id.* 804—5.

Parties in a
Suit being
Witnesses.

In civil cases, a plaintiff in a cause cannot be a witness for himself, nor can the defendant. But in all criminal prosecutions the prosecutor may give evidence in support of the charge against the prisoner. In cases of informations for penalties, the informer, who is the real prosecutor, cannot be a witness, unless the Statute which imposes the penalty, permit it by special provision. *Id.* 806.

In prosecutions which subject the party to corporal punishment, he is permitted to call witnesses to his general character; but in actions or informations for penalties, though founded on the fraudulent conduct of the defendant, such evidence cannot be admitted. *Id.*

IV. OF THE MANNER OF GIVING EVIDENCE.

HE who affirms the matter in issue, whether plaintiff or defendant, ought to begin to give evidence. The evidence both for and against a prisoner ought to be upon oath. A prisoner cannot insist upon the removal out of Court of the witnesses for the Crown, during the examination of each other, as a right. It is a favour which the Court may and does grant sometimes. In cases of life, no evidence is to be taken against a prisoner, but in his presence.

Removal of
Witnesses.

Affirmative to
be proved.

In every issue, the affirmative is to be proved. A negative cannot regularly be proved, and therefore it is sufficient to deny what is affirmed, until it be proved. But when the affirmative is proved, the other side may contest it with opposite proofs, for this is not properly the proof of a negative, but the proof of some proposition totally inconsistent with what is affirmed, as if the defendant be charged with a trespass, he need only make a general denial of the fact; and if the fact be proved, then he may prove a proposition inconsistent with the charge, as that he was at another place at the time, or the like. But to this rule there is an exception of such cases where the law presumes the affirmative contained in the issue. Therefore, in an information against Lord Halifax, for refusing to deliver up the rolls of the Auditor of the Exchequer, the Court put the plaintiff upon proving the negative; namely, that he did not deliver them; for a person shall be presumed duly to execute his office, till the contrary appear.

A witness shall not be cross-examined till he has gone through the evidence for the party on whose side he was produced. *Id.* 807.

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VI. OF PROCESS TO CAUSE WITNESSES TO APPEAR.

THE compulsory means to bring in witnesses, are of two kinds. 1. By process of subpoena issued in the King's name, by the Justices or others where the trial is to be. 2. Which is the more ordinary and more effectual means, (in criminal cases), the Justices that take the examination of the person accused, and the information of the witnesses, may at that time, or at any time after, and before the trial, bind over the witnesses to appear at the Court, and in case of their refusal, either to come, or to be bound over, may commit them for their contempt in such refusal. No witness is bound to appear in *civil cases*, unless his reasonable expenses for going to and returning from the trial, be tendered him at the time of sending the subpoena; nor if he appears, is he bound to give evidence till such charges are actually paid or tendered. Only four witnesses can regularly be included in one writ of subpoena for the appearance of witnesses at the Sessions. In order to save expense, it is settled, that leaving a ticket containing the substance of the writ, will be as effectual as the writ itself; but the writ ought to be shewn. *The writ or ticket should be served personally on the witness*, and in reasonable time before the day of trial, that he may suffer the less inconvenience from his attendance on the Court. If a witness who has been duly served with the writ, and has had a tender of the reasonable expenses, omit to attend at the trial without a sufficient cause, he is liable to be proceeded against in one of three ways. 1st, By attachment, for a contempt of the process of the Court. 2d, By a special action on the case, for damages at common law. 3d, By an action on the Statute in that behalf, for the penalty of ten pounds, and also for the further recompense recoverable under that Statute. But the more usual way is to proceed by attachment. And in order to ground this summary way of proceeding, it is not only necessary to shew an ill motive in the witness, or negligence or inattention to the process of the Court, but also to prove that the witness was personally served; and that his reasonable expenses were paid or tendered at the time of the service of the subpoena. In criminal cases, if a witness has been bound over and do not appear, he shall forfeit his recognizance. In case he do appear, he is entitled to his expenses in certain cases; for which see Title—Witnesses, 1 *Burn's*, 808–9.

Tendering
Fees to a
Witness.

Subpoena to give Evidence.

County of } WILLIAM the Fourth, by the grace of God,
of the United Kingdom of Great Britain and Ire-
[Seal.] land, King, Defender of the Faith.

To A. B., C. D., E. F., and G. H., greeting: We command you and every of you, that all business being laid aside, and all excuses whatsoever ceasing, you do in your proper persons, appear before our Justices assigned to keep the peace in our said county of —, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the General Sessions of the peace to be holden at —, in and for the said County, on the — day of —, at the hour of ten o'clock in the forenoon of the same day, to testify the truth and give evidence on behalf of A. I. against A. O., in a case of —. And this you are in no-wise to omit, nor any of you to omit, on pain of one hundred pounds. Witness A. P. Esquire, the — day of —, in the — year of our reign.

A. D., C. P.

A Subpœna Ticket.

By virtue of His Majesty's writ of subpœna, to you directed, and herewith shewn to you, you are personally to be before His Majesty's Justices of the Peace for the county of —, at the General Sessions of the Peace to be holden for the said county, at — in the said county, on — the — day of — next, to testify the truth, and to give evidence on behalf of A. I. against A. O., in a case of —. And this you are not to omit upon pain of one hundred pounds. Dated this — day of —, in the year of our Lord —.

By the Court, A. D., C. P.

For the Form of a Recognizance to appear and give evidence, see Title,—Recognizance.

NOTE. By the 25 G. 3, c. 2. 1 V. 239, Where a witness lives five miles or upwards, from the place where the trial is to be had before any Court, or Justice, such witness may be summoned to attend, by any one Justice; as to which Statute more at large, with the Form of Summons therein given, see Title,—Witnesses. Further information, and directions with regard to witnesses in prosecutions of a penal nature, and also in civil suits before Justices, with the Forms to be used for requiring their attendance in such cases, will also be found under the same Title.

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EXAMINATION.

WHEN a party arrested for felony, is brought to a Justice of the Peace, he must either discharge, or commit, or bail him. If he be charged with *suspicion* only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony, be in truth no felony in point of law, the Justice may discharge him ; as if a man be charged with felony for stealing a parcel of the freehold, or for carrying away what was delivered him, and such like ; for which, though there may be cause to bind him over for a trespass, the Justice may discharge him as to felony, because it is not felony. 1 *Burn's*, 810.

In order to which bail or commitment, the examination of witnesses and of the prisoner must first be taken, according to the Provincial Statute 8 G. 3, c. 3, § 5. 1 V. 136, by which it is enacted, " that the Justices of the Peace before whom any person shall be brought, for any murder, manslaughter, or felony, or for suspicion thereof, shall take the examination of such prisoner, and information of those that bring him, of the fact and circumstance thereof ; and the same, or as much thereof as shall be material to prove the fact, shall put in writing ; and the same shall certify, together with the bailment of such prisoner, (in case the crime whereof such prisoner is charged is bailable,) at the next Sessions of Oyer and Terminer, or Gaol delivery, to be holden within the limits of their commission. And that the said Justices shall bind all such by recognizance, or obligation, as do declare any thing material to prove such murder, manslaughter, or felony, against such prisoner, to appear at the next Sessions of Oyer and Terminer, or Gaol delivery, to be holden within the county where the trial of such murder, manslaughter, or felony shall be ; then and there to give evidence against such prisoner ; and that the said Justices shall certify the said bonds or recognizances taken before them, in like mannner, as the examination of such prisoner, and the witnesses, are herein before directed to be certified." *Perpetual*.

Examinations
to be taken.

The informations of the accusers or witnesses taken under this Statute, must be upon oath, but the examinations of the prisoners must be taken without oath. And these examinations may be read in evidence against the prisoner, and so may the informations of witnesses taken upon oath, if they are dead, or not able to travel by reason of sickness or other casualty ; for they are Judges of record, and the Statute enables and requires them to take these examinations : but then oath is to be made in Court by the Justice, or his Clerk, that these examinations and informations were duly taken. See 1 *Burn's*, 812.

Oath.

The Statute speaks only of cases of murder, manslaughter, and felony. It does not yet appear to have been expressly decided, whether examinations taken before Justices of the Peace, in cases of *misdemeanors*, can be read in evidence; but from the language of Judges in several cases, it may be said, that the only conclusion yet warranted, is, that the deposition of a witness, taken *ex parte*, before a Magistrate, on an examination for a *misdemeanor*, cannot be read in evidence on the trial of the party for such misdemeanor, though the defendant be dead, beyond sea, or kept out of the way by procurement of the defendant. *Id.* 812

Manner of Examining.

No hopes or threats are to be held out to a prisoner, to induce him to make any confession or statement; neither is he to be sworn; nor to be examined in the manner of a witness; but he is merely to be asked what he has to say, and his voluntary statement, (if he make any,) is to be taken down exactly as he makes it. In a case where the Magistrate examined the prisoner, (though not sworn,) in the manner of examining a witness, the Judge said on the trial,—“I think I am not at liberty to suffer this examination to be read. No matter whether a prisoner be sworn or not. An examination of itself imposes an obligation to speak the truth. If a prisoner will confess, let him do so voluntarily. Ask him what he has to say? But it is irregular in a Magistrate, to examine a prisoner in the same manner as a witness is examined. I must reject this examination.” The prisoner was acquitted. *Id.* 814.

Subscribing Examination.

If by some reasonable occasion the Justice cannot, at the return of the warrant, take the examination, he may by word of mouth command the constable or any other person to detain in custody the prisoner, till the next day, and then to bring him before the Justice for further examination. But the time of detainer, must be no longer than is necessary for such purpose. It was holden, that a party could not be detained sixteen days, and it was said, that three days is a reasonable time. The usual practice is stated to be from three days to three days, by a written mittimus. If the offender upon his examination before the Justice, shall confess the matter, it shall not be amiss that he subscribe his name, or mark to it. But it has been determined by a majority of the Judges, that a written examination, containing a confession of the prisoner's guilt, is admissible in evidence, although it was not signed either by the magistrate or the prisoner. *Id.* 816.

In a case of murder it was solemnly decided, on full consideration, that the deposition of the deceased was admissible in evidence, although not wholly taken in the presence of the prisoner, but the party in his presence, having however been

re-sworn, er's presence. *Id.* 815.

The that bring may cause for that pu therefore t not essenti ness, that a rape, all of a girl d perpetrated, properly a sition was that the J son suspected information clearing of for such in inform the of the mat

For p be tried at inations an by the Jus tices of th into anoth against the

If any in recogni Justice ma complies. witness, w to give evi ness is un nor ought recognizari to be requ to find su every prin mit a mar of felony Sessions t ance. *Id.*

Not

re-sworn, and the deposition repeated and signed in the prisoner's presence ; for he had an opportunity of cross examining. *Id.* 815.

The Justice must take the examinations not only of them that bring the prisoner, but also of other witnesses whom he may cause to appear before him, in pursuance of his summons for that purpose. And such examinations must be upon oath ; therefore the affirmation of a Quaker cannot be taken. It is not essential to the validity of the deposition of a deceased witness, that it should be signed by him. On an indictment for a rape, all the Judges concurred in opinion, that the deposition of a girl deceased, on whose person the crime had been perpetrated, taken on oath by the committing Magistrate, had been properly admitted in evidence at the trial ; though such deposition was not signed by the deceased. It seems just and right, that the Justices who take information against a felon, or person suspected of felony, should take and certify, as well such information, proof, and evidence, as go to the acquittal or clearing of the prisoner, as such as make against the prisoner : for such information, evidence, or proof so taken, is only to inform the King and his Justices of gaol delivery, of the truth of the matter. *Id.* 817.

Certifying Examinations.

For petty larcenies and small felonies, the offenders may be tried at the Sessions of the Peace, and therefore the examinations and informations in such cases, should be sent there by the Justices who took them. Examinations taken by Justices of the Peace in one county, may be by them certified into another county, and there read and given in evidence against the prisoner. *Id.*

If any witness against a prisoner, shall refuse to be bound in recognizance to appear and give evidence on the trial, the Justice may commit him to gaol, to be detained there until he complies. But a Justice is not authorised by law to commit a witness, willing to enter into a recognizance for his appearance to give evidence against an offender, merely because such witness is unable to find a surety to join him in such recognizance ; nor ought the Justice to require such surety. The party's own recognizance, (at the peril of commitment,) is all that ought to be required. The practice of committing witnesses, unable to find sureties for their appearance, is clearly repugnant to every principle of the English law. But a Justice may commit a married woman, who is a material witness upon a charge of felony brought before him, and who refuses to appear at the Sessions to give evidence, or to find sureties for her appearance. *Id.* 817.

Recognizance of Witnesses.

NOTE. As married women, and persons under the age of

twenty one years, cannot themselves be bound in recognizance, they must, in cases of this kind, find a surety to be bound for them.

The party grieved ought to be bound not only to give evidence, but also to prefer a bill of indictment against the prisoner. 1 *Burn's*, 819.

The Examination of a Person charged with Felony.

County of } THE examination of A. O., of —, in the
 { county of —, labourer, taken before me A. M., Esquire, one of His Majesty's Justices of the Peace, acting in and for the said county of —, [or if the case is bailable say, taken before us A. M., and A. R., Esquires, two of His Majesty's Justices of the Peace acting in and for the said county,] the — day of —, in the year of our Lord one thousand eight hundred and —.

The said A. O. being charged before me, [or us] the said Justice, [or Justices,] on the oath of A. I. of —, in the said county, yeoman, with feloniously stealing, at the township of —, in the said county, on the — day of — in the year aforesaid, one silver spoon of the value of ten shillings, the property of the said A. I.

Upon his examination now taken before me, [or us] saith

Taken before me, [or us] the day } A. O.
 and year first above mentioned. }
 A. M. J. P. }

It is recommended, that the Justice, or his clerk, take the examinations of persons accused, in the first person, and in the identical words and expressions used by the prisoner.

The Examination of a Witness against a person charged with Felony.

County of } THE examination of A. I. of —, in the coun-
 { ty of —, yeoman, taken on oath, this — day of —, in the year of our Lord one thousand eight hundred and —, before me A. M. Esquire, one of His Majesty's Justices of the Peace, acting in and for the said county of —, in the presence and hearing of A. O. charged this day before me the said Justice, with feloniously stealing, in the township of — in the said county, on the — day of — in the year aforesaid; one silver spoon, of the value of ten shillings, the property of the said A. I.

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This deponent saith, that the silver spoon now produced, is the property of him this deponent, and that on the — day of this present month of —, in the year aforesaid, the said silver spoon was stolen and carried away from the dwelling house of the deponent, at — aforesaid, and that on the — day of this present month, he saw the said silver spoon, now produced, in the possession of the prisoner A. O. or [as the case may be.]

Taken and Sworn before me [or us] }
the day and year first above mentioned }

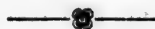
A. I.

A. M. J. P.

The plain and obvious meaning of the words spoken by the witness, ought to be taken down, and not merely the result of the evidence. 1 *Burn's* 819.

For information as to whether a prisoner may or may not be let to bail, and whether by one Justice or two, and for the proceedings therein, reference must be had to the Title,—Bail.

For the Forms of Recognizance of the party complaining,—of the Witnesses, and of the prisoner, (where it is a bailable offence,) see Title,—Recognizance; and for the Form of a Summons for a witness, see Title,—Witnesses. Further information as to the giving examinations in evidence, will be found under the Title,—Evidence.



EXECUTION, see Titles,—SUMMARY TRIALS, and TRESPASSES.



EXTORTION.

EXTORTION in a large sense, signifies any oppression under colour of right; but in a strict sense it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. And by the Statute of the 3 Ed. 1. c. 26, (which is only in affirmance of the common law,) “No sheriff, nor other the King’s officer, shall take any reward to do his office, but shall be paid of that which they take, of the King; and he that so doth, shall yield twice as much, and shall be punished at the King’s pleasure.” Under these words of the Statute, “No Sheriff nor other the King’s officer” are understood, escheators, coroners, bailiffs, gaolers, and other inferior offi-

cers of the King, whose offices were instituted before the making of this Act, which any way concern the administration or execution of justice, or the common good of the subject, or for the King's service. Also, the Justices of the peace, whose office was instituted after this Act, are bound by their oath of office, "to take nothing for their office of Justice of the peace, to be done, but of the King, and fees accustomed, and costs limited by Statute." (See the oath of a Justice of the peace, under the title,—Justices.) And generally, no public officer shall take any other fees or rewards for doing any thing relating to his office, than some Statute in force gives him, or else as hath been antiently and accustomedly taken; and if he do otherwise, he is guilty of extortion. The officers mentioned and intended in the foregoing Statute, can at this day take no more for doing their office, than hath been since allowed to them, by authority of Parliament. All prescriptions which have been contrary to this Statute, and to the common law in affirmance of which it is made, have been always holden to be void. It has been resolved, that a promise to pay them money for doing of a thing, which the law will not suffer them to take any thing for, is merely void. At the common law, this offence of extortion, is severely punishable at the King's suit, by fine and imprisonment; and also by a removal from the office, in the execution whereof it was committed.—And this Statute doth add a greater penalty than the common law gave; for hereby the plaintiff shall recover his double damages. 2 *Burn's*, 368–9.

NOTE. The fees of Justices of the peace in this Province, are, in nearly every case, regulated by several Provincial Statutes; and penalties are therein imposed upon those who shall exact or take any greater or other fees for the services mentioned, than are thereby allowed; for which see Title,—Fees.

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FALSE TOKENS.—See CHEAT.

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F E E S.

By the 28 G. 3 c. 15. 1. V. 259, No officers or other person or persons whatsoever, for any service or services by him or them to be done and performed, in their respective offices

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hereinafter mentioned, for any fee, perquisite, or other reward, shall exact, demand, or receive, any greater or other fee or fees, sum, or sums of money, than is or are hereinafter set down, allowed and established for the same, that is to say:—

JUSTICES' FEES.

Issuing Writ or Summons,—two shillings and sixpence.
 Subpoena,—six pence.
 Judgment,—one shilling.
 Execution,—one shilling.
 Every Bond or Recognizance,—one shilling.
 Every Affidavit in writing,—one shilling.
 Sending Process to Inferior or other Courts;—one shilling.
 Warrant in Trespass, Assault in Battery, on Conviction of the Offender,—one shilling.
 Acknowledging Instrument or Deed,—one shilling.
 Every Examination in Assault in Battery, on Conviction of the Offender,—two shillings and sixpence.

CONSTABLES' FEES.

Attending a Jury in each Cause,—one shilling.
 Serving every Warrant or Summons,—one shilling.
 Summoning a Jury by Warrant from Coroner, and attendance per day,—two shillings and sixpence.
 Travelling per mile, the same as the Sheriff,—three pence.

WITNESSES' FEES.

For attendance per day at Court,—two shillings and sixpence.
 Travel per mile,—three pence.

Sec. 6. If any officer or person whomsoever, shall exact or take any greater or other fees, in respect of any of the services before mentioned, than are ascertained or allowed as aforesaid, he or they so offending, shall for each offence, forfeit the sum of ten pounds; one half thereof to the use of the King, towards the support of the Government of the Province, and the other half to any one who shall sue for the same to effect; to be recovered in any Court of Record, with full costs of suit, and the party so offending shall further pay double the amount of the excessive fees taken, to the party aggrieved. Provided that all actions and prosecutions for the forfeitures and penalties incurred under the Act, shall be commenced in

the county where the offence was committed ; and within six months from the time of committing the same. *Perpetual.*

By the 3 G. 4. c. 30. 3 V. 134, The following Fees are established and allowed in Suits before Justices, for the recovery of debts not exceeding five pounds :

JUSTICES' FEES.

On Writ of Summons—two shillings.
On Capias and Affidavit,—two shillings and sixpence.
On Judgment,—one shilling.
On Execution,—one shilling.
Subpœna,—one shilling.

CONSTABLES' FEES.

Service—one shilling.
Travel—three pence per mile.

WITNESSES' FEES.

Each,—two shillings and sixpence, and
Travel,—three pence per mile.

And by Sec. 8. "any Justice or Justices who shall ask, demand, or receive any greater or other fees than are herein allowed, shall forfeit and pay a fine of ten pounds, together with costs, to be recovered in any action or suit by him or them, that will sue for the same, in any Court of Record within the county where such greater fees shall have been received. *Temporary.*

NOTE. It will be observed, that the fees allowed to a Justice, for a Summons and Subpœna, under the first mentioned Act, are by this latter one altered. For these Writs, therefore, in all cases, the fees now to be taken, are those which are allowed by this latter Statute. The other fees set forth in the first recited Act, continue the same. For the fees where a Jury is ordered on Trials before Justices, see 'Title,—Summary Trials.

FERRIES.

By the 7 W. 4, c. 11. Sess. 1837, Justices in General or Special Sessions, are empowered to establish and regulate ferries over rivers, bays, or creeks, and to appoint and license

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ferryman to attend the same, at such rates of ferrings as such Justices shall establish; and persons so appointed, who shall refuse or neglect to comply with the regulations so made, or shall take more than the established rates of ferrings, shall, for each offence, be fined by the Justices in their Sessions, in any sum not exceeding forty shillings.

Sec. 2. When any ferry is so established, and a ferryman appointed, if any other person not so licensed, shall ferry or carry over the river, bay, or creek, where such ferry is so established, any person, or any description of cattle, or any kind of carriage, for hire, unless by desire or consent of the said ferryman, or on his neglect or refusal to give due attendance, such person shall forfeit and pay a fine not exceeding twenty shillings, nor less than five shillings, to any person who will prosecute for the same; to be recovered on complaint before any two Justices of the peace of the county, together with the costs of prosecution, to be levied by a Warrant of distress from such Justices, against the goods and chattels of the offender, and it shall be directed in and by such Warrant, that if no goods and chattels of such offender, sufficient to satisfy such fine and costs, can be found whereon to levy, that then the said offender be committed to the common gaol of the county, for any number of days not exceeding ten nor less than five, unless he shall sooner pay such fine and costs. Provided, that if any such ferryman shall neglect or refuse to give attendance pursuant to the regulations made for that purpose, in every such case, any other person or persons may supply his place until another ferryman be appointed, and may receive payment for the same, as the proper ferryman might do if present.

Sec. 3. Every licensed ferryman shall keep a good boat, or boats, vessel or vessels, in good repair, suitable for the ferry, and shall give ready attendance on passengers, on all occasions, according to the regulations established; and for every neglect in keeping such boat or boats, vessel or vessels, or in giving such attendance, he shall forfeit a sum not exceeding forty shillings, nor less than ten shillings, to be recovered with costs of prosecution, by whoever shall sue for the same, before any two Justices of the peace, in the same manner as aforesaid, (and shall be further liable in an action on the case for all such damages as any person shall sustain by such neglect.)

Sec. 5. Repeals the only previous Act for establishing and regulating ferries. *Perpetual.*

For directions as to the course of proceeding for recovery of any of the fines mentioned in the foregoing Statute, and for the Forms required, until after conviction, see respectively, Titles,—Information; Summons; Conviction.

The following will serve as a Form of the Warrant, directed to follow a conviction under the foregoing Statute.—

County of } To A. C., one of the constables of the town-
ship of — in the said county.

[Seal.]

[Seal.] WHEREAS, on the — day of —, in the year of our Lord one thousand eight hundred and —, A. O. of — in the said county, yeoman, on the complaint and prosecution of A. F. a licensed ferryman, was duly convicted before us, A. M. and A. R., Esquires, two of His Majesty's Justices of the Peace for the said county, for that he the said A. O., on the — day of —, in the year of our Lord one thousand eight hundred and —, for a certain sum as hire paid to him the said A. O., and without his being licensed as a ferryman, and without the consent and desire of the said A. F., did ferry and carry over a certain river called —, at — in the said county, a certain person named A. T., at which part of the said river there was then a ferry duly established, and of which the said A. F. was then and there the duly licensed and established ferryman, and which said A. F. was then and there ready and willing as such ferryman to ferry and carry the said A. T. over the said river; contrary to the Statute in such case made and provided; And whereas he the said A. O. on his said conviction, was by us the said Justices, for his said offence, adjudged to pay the sum of —, besides the costs of his prosecution before us for his said offence, pursuant to the Statute in such case provided; which costs we have ascertained and assessed at the sum of —; And whereas the said A. O. hath hitherto neglected and refused to pay and hath not yet paid the said several sums, or any part thereof; These are therefore to command you to distrain the goods and chattels of the said A. O. and on the goods and chattels so distrained, to levy the said several sums, and if within the space of five days, next after such distress made, the said sums together with the reasonable charges of taking and keeping the said distress, to be by us allowed, shall not be paid, that then you do sell the said goods, and out of the money arising by such sale, that you do pay the said sum of — to the said A. F., and the said sum of —, the costs aforesaid, to us the said Justices, to be applied and disposed of as by law provided, returning to him the said A. O. the overplus (if any) on demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And if no goods or chattels of the said A. O., sufficient to satisfy the said fine and costs, can be found by you whereon to levy for payment of the same, We further com-

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mand you, that you thereupon take the body of the said A. O., and commit him to the common gaol of the said county, at — to be held and detained in the said gaol, for the space of — days, unless he shall sooner pay the said fine and costs; and for so doing this shall be your sufficient Warrant. Herein fail not. Given under our hands and seals at —, the — day of —, in the year aforesaid.

A. M., J. P.

A. R., J. P.

If the conviction is for any offence of the Ferryman, the Warrant must of course be filled up accordingly, stating such offence as nearly as may be in the words of the Act.

FINES, see—CLERK OF THE PEACE, and JUSTICES OF THE PEACE.

FIRES.

By the 2 G. 3, c. 5. 1 V. 80, The Justices in Sessions at Halifax, are authorised to appoint Firewards for the town of Halifax; and any person disobeying the orders of such Firewards at the time of fires, may within two days after such disobedience, be informed against, and prosecuted for the same, before two Justices; and on conviction shall forfeit and pay forty shillings, to be levied and distributed by the direction of such Justices, among the poor most distressed by the fire; and in case of inability to satisfy the fine, the offender shall suffer ten days imprisonment.

Firewards for
Halifax.

Sec. 3. Two Magistrates, or Firewards, may order any house to be pulled down to stop a fire; and upon the owners of houses so pulled down, making application as soon as may be, to the first Justice in the commission of the peace for the town and county, or in his absence to the next named in such commission, such Justice shall call a special Sessions of Justices, which Court on being satisfied by such proof as shall be brought, of the justice of the claims made, shall issue an order for a valuation of the damages so sustained, to be made by two or more indifferent persons, who shall make a return of their proceedings upon oath, into the said Court by the day fixed, whereupon the Court shall appoint two or more assessors, who shall tax the houses of the inhabitants that have not been burnt,

Pulling down
Houses at
Fires.

at such rates as they shall think just, in proportion to the value of the houses that are to be taxed, for paying the said damages, and the charges of valuation, taxation, and collection, together with the other fees of the Court, to be settled before the making such assessment; and the said assessors shall report their proceedings to the Court also upon oath. And the said Court shall thereupon issue an order for collecting the monies so taxed, and in case of non-payment, the same shall be levied by warrant of distress, to be obtained from any one of the said Justices, upon application to him by the collector or collectors of the said tax. And as soon as the assessments are so collected, the Court shall order payment to be made to the parties claiming, according to the report made and approved of the said damages; as also the payment of such other charges as aforesaid. Provided, that if the house where the fire began shall be pulled down, no satisfaction shall be made for such house.

Stealing at
Fires.

Sec. 5. Persons who shall rob, plunder, purloin, embezzle, or convey away or conceal any goods or effects of the distressed inhabitants, whose houses are on fire, or endangered thereby and put upon removing their goods; and shall not restore and give notice to the owners, if known, or bring the goods into such public place as shall be appointed by the Governor and Council, within two days next after proclamation made for that purpose, shall upon conviction, suffer death as in cases of felony, without benefit of clergy. *Perpetual.*

Returning
Ladders,
Hooks, &c.
after Fires.

By the 22 G. 3, c. 4. 1 V. 227, Within twenty-four hours after the extinguishing of any fire, the ladders, fire hooks, bags, axes, saws, and buckets, belonging to the Firewards, shall be delivered at the appointed place of their deposit; and if after the said twenty-four hours, any of the said articles shall be found in the possession of any person, he, or she, shall forfeit and pay a fine of forty shillings, to be levied by warrant of distress and sale of the offender's goods, before any one Justice of the peace, the said fine to be paid into the hands of the Fireward to whom the said articles belonged, and to be applied for the purpose of repairing the said ladders, fire-hooks, axes, buckets, bags and saws. The amount of the costs of purchasing ladders, fire-hooks, axes, buckets, bags and saws, shall be levied on the inhabitants of the town and suburbs of Halifax, by assessment, in the same manner as is provided for levying monies for the support of the poor, and shall also be recovered accordingly. *Perpetual.*

Engine Men.

By the 23 G. 3. c. 6. 1 V. 234, Engine men shall be appointed in Halifax, one of whom shall have the power of a Fireward, to command necessary assistance in taking the Engine to and from the place of fire; and any person refusing to obey

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the Engine
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such orders shall be subject to the same fines as imposed by the aforesaid Act of the 2 G. 3. c. 5. Expences of repairs of the Engine, shall be levied by assessment under the order and direction of the Grand Jury and Justices in Sessions at Halifax. *Perpetual.*

By the 28 G. 3, c. 8. 1 V. 257, The Firewards at Halifax, shall appoint and license Chimney Sweepers, and make regulations for sweeping chimneys once a month at farthest. And if a fire shall happen in any house, or chimney, so as to occasion alarm or danger, unless the occupant of such house shall make it appear that the chimney or chimnies of such house, have been swept according to such regulations, by some licensed sweeper, such occupant shall forfeit and pay a fine of forty shillings, to be recovered on the complaint of any one of the Firewards, before any Justice of the Peace for the county, and to be levied by warrant of distress on the offender's goods and chattels; and for want thereof, on his body; and to be paid into the hands of such Fireward, to be by him applied to the repair of the Fire Engines, or Water Buckets, or such other uses as the safety of the town from fire may require. And any Fireward neglecting to give information, or to make complaint in such case, shall forfeit and pay five pounds to the use of the poor of the town, to be recovered before the Justices in Sessions for the county, on the complaint of any inhabitant of the town being a freeholder or housekeeper.

Sweeping
Chimnies.

Sec. 3. It shall be lawful for any three of the Firewards, on view of any chimney, stove pipe, or smoke funnel in said town, which they may deem to be dangerous and insufficiently built or secured, to prevent the risk of fire, to order the same to be removed, altered, or repaired, as they may direct, within twenty-four hours, or such other reasonable time as they may allow. And if the occupant of the house or building in which the same is placed, shall neglect to remove, repair, or secure the same as directed, such Firewards shall apply to any one Justice and three Freeholders within the town, to examine the same. And in case such Justice and Freeholders shall agree in opinion with the said Firewards, that such chimney, stove pipe, or funnel, is likely to endanger the town, or any building; and the owner or occupant of the house, or building where the same shall be placed, shall not then give to such Firewards, sufficient security to alter, repair, or remove the same, as they shall direct, such Justice shall order the same to be immediately removed or prostrated as a common nuisance; and shall issue a warrant of distress to seize and sell at public auction, so much of the goods and chattels of such owner or occupant, as shall be sufficient to defray the expense of the removal, or prostration of such nuisance.

Removing or
altering Chim-
nies.

Sec. 4. The Sessions at Halifax may make assessments from time to time on the inhabitants, for the purchase and repair of fire engines. *Perpetual.*

Shelburne.

By the 30 G. 3, c. 1. 1 V. 277, The fine of forty shillings imposed by the foregoing Statute, on persons neglecting to sweep their chimnies, is reduced to ten shillings; the same to be recovered and applied as directed by the said foregoing Statute. And all the clauses and things contained in all the foregoing Acts, and in this Act, are extended to the town of Shelburne, in the same manner as if the said town had been named therein.

Windsor, Annapolis, Lunenburg.

By the 31 G. 3, c. 8. 1 V. 286, Engine men at Halifax are exempted from working on the highways, or serving as Jurors or Constables. *Perpetual.*

By the 33 G. 3, c. 7. 1 V. 318, The before recited Act of 2 G. 3, c. 5, and also the foregoing several Acts of the 23, 28, and 30 G. 3, are extended to the towns of Windsor, Annapolis, and Lunenburg. Provided, that it shall be lawful for the Justices in Sessions, to assign the limits within which the inhabitants of the said towns shall be liable to make good losses sustained and recoverable under the said Act of 2 G. 3, c. 5. *Perpetual.*

Liverpool.

By the 41 G. 3, c. 1. 1 V. 435, The before recited Act of 2 G. 3, c. 5, and also all the other foregoing Acts, are extended to the town of Liverpool, in as ample a manner as if the said town had been named therein. *Perpetual.*

Engine men & Firewards.

By the 47 G. 3, c. 15. 2 V. 11, Additional Engine men and Firewards may be appointed in Halifax, and Engine men in the towns of Annapolis, Windsor, Shelburne, Liverpool, and Lunenburg, are exempted from working on the highways. *Perpetual.*

Implements for Firemen in Halifax.

By the 52 G. 3, c. 13. 2 V. 90, The Justices in Sessions at Halifax, on application of the Firewards, may order such number of hooks, chains, ropes, ladders, axes, and saws to be provided, as the Justices may deem expedient; and may order the cost of providing the same, and keeping them in repair, to be assessed and levied in the same manner as the poor rates. The Sessions shall appoint Firemen, who shall have charge of the said hooks, chains, ropes, ladders, axes and saws, and shall be exempted from working on the highways; and one of whom, to be named by the Sessions, shall have the authority of a Fireward, to order assistance for conveying the said implements to and from a fire; and any person refusing to obey any such order, shall be subject to the same fine; (of forty shillings) as is imposed by the aforesaid Act of 2 G. 3, c. 5. for refusing to obey the orders of a Fireward. Persons who shall have in their possession, any of the said implements

belonging within two miles of them, except as provided by the 22d Act in directed fire, or the orders of one Justice than twenty by the Justice thereof, upwards, they shall shew sufficient cause if he shall shall, for less than Clerk of Two Fire directed to make regulations not exceeding the rents of a transgression such fine. Licensed duty, and half made shall for one nor more Justice, or son so com may be n the same by warrant rection, f

By of a fire i any build to do so, either by or Magis forfeit a

belonging to the Firemen, and shall neglect to return them within twenty-four hours after a fire, or shall be found using them, except at the time of the fire, or on the alarm thereof, shall be subject to the same penalty, [of forty shillings,] as is provided for a similar offence, in and by the before recited Act of the 22 G. 3, c. 4, and to be recovered and applied as therein directed. And every Constable at Halifax, who at a time of fire, or the alarm thereof, shall refuse or neglect to obey the orders of any Fireward, shall upon conviction thereof before one Justice, forfeit a fine not less than five shillings, nor more than twenty shillings; and every such Constable, if called on by the Justices in Special Sessions, after any fire, or alarm thereof, shall prove by certificate from one or more of the Firewards, that he duly attended and did his duty at such fire, or shall shew to the satisfaction of such Justices, that he had a sufficient cause which prevented him from so attending; and if he shall neglect to produce such certificate or excuse, he shall, for every such neglect, be liable to the same fine of not less than five shillings, nor more than twenty shillings; and the Clerk of the Peace shall read this clause to the Constables. Two Fire Bells shall be provided and paid for, in the manner directed in the first clause of this Act; and the Sessions shall make regulations for preventing boys and others from unnecessarily ringing them, or injuring them; and shall impose a fine not exceeding twenty shillings for each such offence. The parents of children under age, and the masters of apprentices, transgressing such regulations, shall be liable to the payment of such fine, which shall be levied on their goods and chattels. Licensed chimney-sweepers shall give bonds to perform the duty, and on failing to comply with the regulations in that behalf made by the Firewards, and approved of by the Sessions, shall for each offence forfeit a fine of not less than five shillings, nor more than twenty shillings, to be recovered before one Justice, on the oath of one credible witness. And if the person so convicted shall not have sufficient goods whereon distress may be made to the value of the fine imposed, or shall not pay the same within ten days after conviction, then the Justice may by warrant commit such offender to the gaol, or house of correction, for a term not exceeding ten days. *Perpetual.*

By the 58 G. 3, c. 33. 3 V. 38, No person at the time of a fire in Halifax, shall break open the doors or windows of any building, or attempt to pull the same down, or order others to do so, unless orders for so doing shall have been first given, either by the owner of the house or by at least four Firewards, or Magistrates; and any person so doing, shall for each offence forfeit a fine of forty shillings, to be recovered as is directed in

Constables attending at Fires.

Fire Bells.

Chimney Sweepers.

Pulling down Houses, Doors, &c. at Fires.

and by the second section of the aforesaid Act of 2 G. 3, c. 5, and the person so offending shall be answerable to the owner of such building, for the damages done to the same. And the town of Halifax shall not be liable for any damage done by pulling down, or injuring any building at the time of fire, unless orders for so doing shall have been given by at least four Magistrates or Firewards. No compensation shall be allowed from the town of Halifax for a house pulled down after it has taken fire. *Perpetual.*

By the 60 G. 3, c. 7. 3 V. 66, Buildings in Halifax, of stone or brick, covered with tile, slate, tin, or sheet iron, shall not be assessed for more than one fourth of their value, towards paying for any building which has been pulled down at the time of fire. And all stone and brick buildings, covered with shingles, shall in such case be assessed for one half of their value.

Annapolis.
Windsor.
Lunenburg.
Liverpool.
Dartmouth.

Sec. 4. The before recited Act of 52 G. 3, c. 13, is extended to the towns of Annapolis, Windsor, Lunenburg, and Liverpool. *Perpetual.*

By the 1 & 2 G. 4, c. 32. 3 V. 114, The before recited Act of 2 G. 3, c. 5, with all the other foregoing Acts, in addition to, or amendment thereof, are fully extended to the town of Dartmouth. *Perpetual.*

Yarmouth.

By the 3 G. 4, c. 4. 3 V. 122, The before recited Acts, of 2 G. 3, c. 5, and of 52 G. 3, c. 13, are extended to the town of Yarmouth. *Perpetual.*

Pictou.

By the 4 G. 4, c. 24. 3 V. 167, The before recited Acts of 2 G. 3, c. 5,—22 G. 3, c. 4, and 28 G. 3, c. 8; also 1st and 2d Sections of 30 G. 3, c. 1, and 1st, 2d, and 3d Sections of 60 G. 3, c. 7, are extended to the town of Pictou. *Perpetual.*

By the 5 W. 4, c. 12. 4 V. 380, Which relates only to the town of Halifax, sundry regulations are established for preventing fires, and for the more speedily and effectually extinguishing the same, by enforcing the attendance and assistance of the inhabitants on such occasions, with further enactments concerning Firewards, Engine-Men, and Constables; and imposing penalties for breaches of the provisions of the Act. *Perpetual.*

For information as to the course of proceedings for the recovery of the fines, directed in the several foregoing Statutes to be recovered before a Justice or Justices, and for the Forms requisite in such cases, see respectively, Titles,—Information; Summons; Conviction; Distress; Commitment.

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FIREWORKS.

By the 2 G. 3, c. 4. 1 V. 79, Persons who shall make, or cause to be made, or shall give, sell, or utter any squibs, rockets, serpents, or other fireworks, or any moulds or instruments for making the same, and persons who shall throw, or fire, or be aiding and assisting in throwing or firing of the same, into any public street, house, shop, highway, passage, or water ; or who shall permit any squibs, or other fireworks, to be thrown or fired from their houses, shops, lodgings or habitations, or in any place thereto belonging, or adjoining to any public street, road, or passage, or any other place, shall each and every of them, for each and every of such offences, on conviction thereof before any one Justice of the peace where the offence was committed, by the confession of the party, or on the oath of one credible witness, forfeit and pay the sum of forty shillings : such forfeitures to be levied by distress and sale of the goods of every such offender, by warrant of such Justice ; the one half of every such forfeiture to be to the use of the poor where the offence was committed, and the other half to the use of those who shall prosecute such offenders to conviction. And if any such offender shall not, immediately on conviction, pay to the said Justice the said forfeiture, such Justice shall by warrant commit such offender so convicted, to the house of correction, or gaol, for any time not exceeding fourteen days ; unless such offender shall sooner pay the said forfeiture to the said Justice. Provided, that nothing in the Act shall debar the Governor, or the Commanding Officers of the troops, or any persons employed under them, from making and firing off any such fireworks.

Sec. 4. No person shall make any bonfire, within three hundred yards of any buildings, or stacks of hay, or corn, under the penalty of forty shillings ; to be recovered and applied in the manner herein before mentioned. *Perpetual.*

NOTE. There is an evident inconsistency, and indeed contradiction, in the terms of the foregoing Statute, with regard to enforcing the payment of the penalties. In the first place it is prescribed, that the forfeitures shall be levied " by warrant of distress : " and directly after it is said, that if the offender " shall not pay the forfeiture to the Justice, immediately on conviction, he shall be committed," &c. It is presumed, however, that it is intended, that where the party convicted has any goods whereon a warrant of distress may be levied, such warrant shall be issued ; and that he is to be committed, only

in the case of his having no goods, or where none can be found, on which to levy the warrant. In the case of a person under age, or of any other who has no goods whereon distress may be made, it seems clear that such offender upon failing to pay the penalty immediately on conviction, may at once be committed by the warrant of the Justice.

For directions as to the proceedings of the Justice under this Statute, and for the Forms which may readily be made to serve, see respectively, Titles,—Information; Summons; Conviction; Distress; Commitment.

FISH.

By the 9 G. 4, c. 20. 4 V. 33, A chief Inspector, and deputy Inspectors of all pickled fish shall be appointed, whose duty it shall be to inspect such fish, and to see that the same are assorted into different qualities, and that the casks in which the same are put up, are of certain specified descriptions, and contain certain prescribed quantities of such fish; and that the fish are good and well packed, and shall brand such casks according to the kind and qualities of the fish put up therein.

Removing
Fish not In-
spected.

Sec. 5. If any master of a vessel, or other person, shall put or receive on board any vessel, or other carriage of conveyance, to transport from the Province, any pickled or whole fish, packed in casks, which are not inspected and branded in the manner prescribed by the Act, such offender shall on conviction forfeit not less than thirty shillings, or more than forty shillings for every hundred pounds of such uninspected fish.

Improperly
Branding, &c.

Sec. 7. If the chief Inspector or any deputy, shall brand any cask, the contents of which he has not inspected, packed, salted, and coopered, according to the true intent of the Act; or if he shall permit any other person to use his brands, in violation or evasion thereof, such offender shall forfeit for every cask so branded, the sum of five pounds, and be liable to be removed from his office.

Selling or Ex-
porting Fish
not Inspected.

Sec. 8. If any pickled or barrelled fish as aforesaid, shall be put on board any boat, vessel, or carriage of conveyance, with intent to sell or export the same, contrary to the provisions of the Act, it shall be lawful for any Justice for the county, upon information given him, to issue his warrant to the Sheriff or his deputy, or to any Constable of the town in which such boat, vessel, or carriage may be, requiring them respectively, to seize and secure said fish, and carry the same to the chief Inspector, or a deputy Inspector, whichever may be nearest;

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and such Inspector, or deputy, shall open, inspect, pack and brand the casks, and detain the same, until the expences of so doing, and all other charges arising from such seizure, shall be paid. And every person, when required, shall give his necessary aid to the officer having such warrant, on pain of forfeiting thirty shillings for his refusal. *Temporary.*

By the 10 G. 4, c. 30. 4 V. 54, The first, third, and ninth Sections of the foregoing Act are repealed; and all the before recited, as well as the other clauses thereof, and also the present Act, are extended and made to apply to all pickled fish, packed for sale, whether intended for exportation or consumption within the Province.

Sec. 16. The sorting, weighing, inspecting and branding any cask of fish, as directed by this Act, shall be made and done, either by or in the immediate presence and sight of the chief Inspector, or of some one of the deputy Inspectors; and unless in such immediate presence and sight of an Inspector, no other person shall be allowed to brand a cask, or sort or inspect such fish, under the penalty of three pounds upon the Inspector suffering the same to be done.

Sec. 19. Whosoever shall in or from any cask, intermix, take out, or shift any inspected fish, packed or branded according to the directions of the Act, or put therein other fish, for sale or exportation, contrary to the true intent of the foregoing Act, and the present one; and whosoever shall sell, or export, or offer for sale or exportation, or cause to be sold in, or exported from the Province, any tainted or damaged fish, or any tierce, barrel, or half barrel of pickled fish, not inspected and branded according to this Act; and whosoever shall carry or convey from the vicinity of Halifax, or any of the outports or other places in the Province, into the inland or other parts thereof, any fish, packed in tierces, barrels, or half barrels, and intended for consumption, but not being branded as herein before directed; whosoever being the master of any vessel, having on board any pickled fish for exportation, or being the shipper thereof, shall not produce to the principal officers of the Customs for the port, before the ship's departure therefrom, such certificates of the chief Inspector, or any deputy Inspector, as is by the foregoing Act directed, each and every of the parties so offending, shall pay a penalty of twenty shillings for every hundred weight of the fish in this section referred to.

Sec. 21. All pickled fish not inspected and branded according to the Act, or tainted or damaged, being in tierces, barrels, or half barrels, and shipped for exportation, or offered for sale in the Province, or found while being conveyed into

Disposing of
Fish improp-
erly.

Forfeiture of
Fish.

the inland ports of the Province ; and all fish taken, shifted, or intermixed, from or in the cask after the inspection and branding thereof, shall be and is hereby declared forfeited.

Recovery of
Penalties and
Forfeitures.

Sec. 22. All pecuniary penalties imposed by the foregoing Act, and the present one, shall be recovered before a Justice or Justices of the Peace, or any Court of Record, having jurisdiction to the amount of the penalty sued for ; and all pickled fish forfeited shall be seized by the chief Inspector, or any of his deputies, or the Collectors of Impost and Excise, and the officers of the Provincial Revenue, and unless the fish is tainted or damaged, shall be condemned and adjudged before any one or more Justices of the Peace, or in any Court having jurisdiction, according to the value thereof ; and the proceeds of such forfeitures, and of the penalties aforesaid, shall be applied, one half for the benefit of Common Schools in the town where the offence is committed, and the other half to him who will sue for the same. Provided, that tainted and damaged fish shall, without being condemned, be destroyed or sold for manure.

Making In-
spection.

Sec. 25. When any quantity of fish not exceeding twenty barrels, shall be required to be inspected, the same shall be brought to the store, wharf, or place of business of the Inspector ; but if the quantity be greater, the Inspector, on payment or tender of his fees, for travel, at the rate of six-pence per mile, from the place of his residence and back, shall attend at the place where the fish may be, and inspect the same, within two days after being requested thereto, under the penalty of forfeiting to the owner thereof, three pounds for each day, that he shall after such space of two days, neglect such inspection. *Temporary.*

NOTE. By the following Statute, the travelling fees to the Inspector are taken away ; but he is required to perform the duty prescribed in this clause, under the penalty mentioned therein.

Appointing
Inspectors,
and their pow-
ers, duties,
&c.

By the 7 W. 4, c. 44. Sess. 1837. The two foregoing Acts, except as altered and amended, are continued for one year ; and it is enacted, that in future no chief Inspector for any county or district shall be appointed ; but where it shall be judged necessary Inspectors shall be appointed in the General Sessions, in the same manner as other township officers, and shall be licensed, and enter into bonds with sureties, for the performance of their duties, according to the directions and in the forms prescribed and set forth in the Act ; and shall be sworn before a Justice to the faithful discharge of their duties,

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and shall remain in office until removed by the General Sessions : and the duties, powers, and authorities, responsibilities, and liabilities of such Inspectors, shall be the same as those of any chief Inspector, or deputy Inspector, under either of the before mentioned Acts. Provided, that the liability of any such Inspector under this Act, shall only extend to the fish actually inspected by him. Every such Inspector shall be liable to the same penalties and forfeitures for neglect of duty, as the chief Inspector or any deputy Inspector are made liable to, under either of the before mentioned Acts ; and shall receive for inspecting and branding every tierce of pickled fish,—eight pence ; for every barrel,—five pence ; and every half barrel—three pence ; and for every certificate of exportation,—one shilling. And every Inspector shall annually on or before the thirty-first day of December, make and certify to the Clerk of the Peace, returns on oath before a Justice, of all the pickled fish inspected by him, and of his fees for the same ; abstracts of which returns shall yearly, on or before the twentieth day of January, be made by such Clerk of the Peace to the Secretary of the Province. No travelling fees shall be allowed to any such Inspector for the duty done by him under the 25th section of the aforesaid Act of the 10 G. 4. c. 30. Inspectors shall not inspect their own fish, and if any one of them does so, he shall, on selling, or exporting thereof, be liable to the same penalties and forfeitures as if the same had not been inspected. The Clerk of the Peace shall be entitled to receive from every Inspector, the fee of ten shillings, in full for filling up and taking the license and bond required, and for all services connected therewith.

Fee to Clerk
of the Peace.

Sec. 19. Every Inspector appointed under the Act, for every tierce, barrel, or half barrel, improperly branded, before the same shall be packed, filled, and inspected, shall forfeit the sum of forty shillings, to be recovered before one Justice of the peace for the county, by any person who shall sue for the same, in the same manner as if the said penalty were a debt due, which shall be paid and applied, one half to the person who shall sue for the same, and the other half to be paid to the County Treasurer, to be expended on roads and bridges under the directions of the Sessions. *Temporary.*

Improperly
branding
Casks.

From the directions contained in the two first of the foregoing Acts relative to the manner of recovering the several penalties mentioned therein, and of prosecuting in the case of fish liable to forfeiture, and particularly from a reference to the 22d clause of the foregoing Act of 10 G. 4. c. 30, it is to be inferred and understood, that where the penalty for an offence under either of the said two first mentioned Acts, or the value of fish

Directions.

liable to forfeiture does not exceed the sum of £3, the prosecution must take place before one Justice, and where the amount is above that sum but does not exceed £5, such prosecution must be had before two Justices, and where the amount is above that sum, it must take place in some Court of Record. The instructions requisite with regard to prosecutions before a Justice or Justices for the recovery of any such penalties, and the forms which may be made to serve, will be found under the respective Titles—Information ; Summons ; Conviction. As it is not provided by either of the said two first Statutes, that after convictions before Justices any kind of final process is to be issued for enforcing payment of the penalties adjudged—it is conceived according to what has been already advanced under other titles relative to similar omissions, that Justices are not authorized upon such convictions under these Statutes—either to issue warrants of distress, or to commit to prison the parties convicted. In the case of fish forfeited, although no particular form of proceeding before Justices is pointed out by the Statutes, yet it seems but legal and proper that an information as in the case of prosecutions for penalties, should first be given in, and that the owner or person having the custody or possession of the fish should be summoned in the usual form to answer to the complaint, and that a hearing of the whole case should take place before the Justice or Justices, previous to any final decision being made thereon. The Justices should make and keep minutes of their proceedings, and of their judgments in all such cases of forfeiture, but they are not required to draw up any particular form of judgment, as in the case of a conviction for a penalty. The forms of an Information and Summons in such prosecutions for fish forfeited, and also the form of an Information under the first of the foregoing Acts, for endeavouring to remove for sale or exportation any fish not inspected, with the Warrant for seizing the same, will all be found at the end of this title. As the fine of forty shillings imposed in the nineteenth clause of the last mentioned Act, is to be recovered as a debt due, the requisite directions and forms in such case, will be found under the Title,—Summary Trials.

Smoked Herrings.

By the 3 W. 4, c. 53. 4 V. 234, Red or smoked herrings for exportation, shall only be put up in boxes of certain described dimensions, and Inspectors of such herrings shall be appointed in the Sessions, in the same manner as other town officers, and vacancies in the office in like manner be filled up by two Justices ; and on the refusal of such Inspectors to serve, or their being guilty of any neglect or misbehaviour in their office, they shall be punished in the like manner as other town officers in the like case, under the Act 5 G. 3, c. 1.

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[NOTE. This punishment is a penalty of forty shillings, to be recovered before two Justices, on the information of any person who will sue for the same, and to be levied by warrant of distress.]

Sec. 3. If any smoked herrings shall be shipped for exportation, before the same have been inspected, approved, and marked by the Inspector; or if any such herrings shall be sold and delivered in any boxes, before the same shall have been so inspected, approved, and marked, the same shall, on information and due proof thereof before any one Justice of the Peace, be seized and sold by warrant under the hand and seal of the said Justice, and the nett proceeds of such sale shall be paid to the Overseers of the poor, for the use of the township where the seizure was made.

Sec. 4. If the commander of any vessel shall receive on board of the same, any smoked herrings, to be carried without the township wherein the same were smoked or preserved, before the same shall have been marked by an Inspector, as hereinafter directed, such commander shall forfeit and pay the value of such herrings not marked as aforesaid, to the amount of fifty pounds, according to the price of merchantable herrings; such value, if not exceeding three pounds, to be sued for before any one Justice; and if above that sum, before any Court of Record; the one half of the sum recovered in each case, to be for the use of His Majesty, and the other half for the benefit of the person who will sue for the same.

Sec. 5. The Inspector shall mark every box of herrings which he has inspected and approved, with a brand containing the initial letter of his christian name, and his surname in full, and also the word "Inspector," and the name of the town at full length, for which he is Inspector; and shall also mark the boxes with the quality of the herrings, which if of the fattest, best, and most superior fish, shall be marked No. 1, and of the poorer, thinner, small and inferior fish, No. 2. And if any person shall counterfeit, or be concerned in counterfeiting, the said brand or mark of the Inspector, or shall, without the licence of the Inspector, make use of his brand in marking any box, or shall by shifting, put other fish into any box previously marked by such Inspector, in order to evade the intent and meaning of the Act, such person shall be prosecuted as and for a common cheat, and be punished as such, by fine or imprisonment, at the discretion of the Court before whom he shall be convicted.

Sec. 6. Inspectors shall not mark any boxes but such as shall measure on the inside eighteen inches in length, twelve

inches in breadth, and six inches in depth ; or eighteen inches in length, nine inches in breadth, and eight inches in depth ; nor unless the same shall be sufficiently seasoned, strong, and well made, the covers to be well planed or shaved, and the boxes close packed with good red or smoked herrings, of one size, and previously marked with the initial of the christian, and the surname in full, of the owner or packer of the said herrings.

Sec. 7. Inspectors shall receive from the owner of the herrings, one penny halfpenny for every box of the same which they shall inspect and mark ; and the Inspectors shall open and sufficiently reclose the boxes ; and when it shall be found necessary to cull and repack, they shall receive for doing the same, two pence halfpenny for each box, making in the whole, for inspecting, opening, culling, repacking, reclosing, and marking one box, the sum of four pence.

Sec. 8. Inspectors shall publicly destroy all herrings which they shall cull and reject as not merchantable. *Act for 5 Years.*

Directions with regard to the recovery of the penalties imposed by the last-mentioned Statute, to be recovered before Justices, and also Forms which can readily be filled up so as to serve, will be found under the respective Titles,—Information ; Summons ; Conviction ; Distress. The Form of an Information, for shipping for exportation, or for selling smoked herrings before inspection, and the Warrant for seizing and selling the same, will be found at the end of this Title.

Information on Stat. 9, G. 4, c. 20, § 8, For putting Casks of Pickled Fish, not Inspected and Branded, on board of a Vessel, with intent to sell or export the same.

County of } The information and complaint of A. I., of
 } the township of — in the said county, yeoman,
 made before me, A. M., Esquire, one of His Majesty's Jus-
 tices of the Peace for the said county, on the — day of —,
 in the year of our Lord one thousand eight hundred and —,

Who says, that several casks of pickled fish, to the number of — casks thereof, or upwards, which have not been inspected and branded by any Inspector of pickled fish, pursuant to law, have lately been shipped, and now are on board of a certain vessel called the —, at — in the said county, with the intent to sell or export the said casks of fish, contrary to the form of the Statute in that case made and provided.

A. I.

Before me, A. M., J. P.

County of

[Seal.]

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Warrant thereon.

County of } To A. C., one of the Constables of the
 } township of — in the said county.

[Seal.]

WHEREAS information and complaint have been made before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, by A. I., of the township of — in the said county, yeoman, that several casks of pickled fish, to the number of — casks thereof, or upwards, which have not been inspected and branded by any Inspector of pickled fish, pursuant to law, have lately been shipped, and now are on board of a certain vessel called the —, at — in the said county, with the intent to sell or export the same, contrary to the form of the Statute in such case made and provided; These are therefore to require and command you, that with necessary and proper assistants, you do enter in the day time, on board of the said vessel called the —, wherever she may be within the said township of —, and that you there seize and take into your custody and possession all barrels and other casks of pickled fish which have not been inspected and branded by some Inspector of pickled fish, which upon due search made you shall find on board of the said vessel; and that you do forthwith convey and deliver the same to the Inspector of pickled fish in the said county, who shall be nearest to the place where the said vessel may be, in order that such proceedings may take place concerning the said fish, as are by law directed. Herein fail not, and make due return to me of your doings hereon. Given under my hand and seal, at — in the said county, the — day of —, in the year of our Lord one thousand eight hundred and —.

A. M., J. P.

If the fish are in a boat, or other carriage of conveyance, the Information and Warrant must be filled up accordingly. It will be observed, that by a clause in the Statute, the Inspector shall detain the fish until all the charges arising from the seizure of it shall be paid.

Information of Inspector of Pickled Fish, of such Fish, not Inspected, being offered for Sale. On 10 G. 4, c. 30.

County of } The information and complaint of A. I., of
 } — in the said county, an Inspector of pickled
 fish for the township of — in the said county, made before
 me, A. M., Esquire, one of His Majesty's Justices of the

Peace in and for the said county, on the — day of —, in the year of our Lord one thousand eight hundred and —,

Who says, that on the — day of —, in the year aforesaid, at — in the county aforesaid, A. O., of — in the county aforesaid, trader, did offer for sale and sell, — barrels of pickled mackerel, the same not being inspected and branded by any Inspector of pickled fish, contrary to the Statute in such case made and provided; whereby the said barrels of mackerel are forfeited, pursuant to the said Statute; wherefore the said A. I. prayeth the judgment of me the said Justice, that the said — barrels of mackerel may be condemned as forfeited, and that the proceeds of the same may be distributed and applied as the law directs; and that the said A. O. may be summoned to appear before me the said Justice, to answer the premises.

A. I.

Exhibited before me,

A. M., J. P.

Summons thereupon.

County of } To A. C. one of the Constables of the town-
ship of —, in the said county.

[Seal.]

Whereas information and complaint have been made before me A. M. Esquire, one of His Majesty's Justices of the Peace in and for the said county by A. I. of —, in the county aforesaid, an Inspector of pickled fish, for the township of —, in the said county, that A. O. of —, in the county aforesaid, trader, on the — day of —, in the year of our Lord one thousand eight hundred and — at —, in the said county, did offer for sale, and did sell — barrels of pickled mackerel, the same not being inspected and branded by any Inspector of pickled fish, contrary to the Statute in such case made and provided, whereby the said mackerel are forfeited; These are therefore to require you, forthwith to Summon the said A. O., to appear before me, at —, in the said county, on the — day of —, at the hour of — in the forenoon of the same day, then and there to answer to the said information and complaint, and that such further proceedings may take place therein as are by law directed, and be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal, the — day of —, in the year aforesaid. A. M., J. P.

If the Information is, for shipping for exportation, casks of fish not inspected and branded, or for conveying the same

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into the inland parts of the province, or for taking, shifting, or intermixing, from or in the casks, any fish after the inspection and branding thereof, or for any other offence under any of the foregoing Statutes, whereby there is a forfeiture of the fish, the Information and Summons must, in each case be filled up accordingly, stating the offence, as nearly as may be, in the words of the Statute.

Information on the Stat. 3 W. 4, c. 53, For Shipping for Exportation, Red or Smoked Herrings, which have not been Inspected and Branded.

County of } THE Information and complaint of A. I. of
 —, in the said county, yeoman, made before
 me A. M. Esquire, one of His Majesty's Justices of the
 Peace, in and for the said county, on the — day of —, in
 the year of our Lord one thousand eight hundred and —.
 Who says that several boxes of red or smoked herrings, to the
 number of — boxes thereof or upwards, which have not been
 inspected and branded by any Inspector of such herrings, pur-
 suant to the law in such case provided, have lately been ship-
 ped for exportation; on board of a certain vessel called the
 —, at —, in the said county, and are now there on board
 of the said vessel for the said purpose of exportation, contrary
 to the Statute in that case made and provided, whereby the
 said boxes of herrings are liable to be seized and sold pursuant
 to the said Statute.

A. I.

Exhibited before me,
 A. M., J. P.

Warrant thereupon.

County of } To A. C. one of the Constables of the town-
 } ship of —, in the said county.

[Seal.]

WHEREAS information and complaint have been made be-
 fore me A. M. Esquire, one of His Majesty's Justices of the
 peace in and for the said county, by A. I. of —, in the said
 county yeoman, that several boxes of red, or smoked herrings,
 to the number of — boxes thereof, or upwards, which have
 not been inspected and branded by any Inspector of such her-
 rings, pursuant to the law in such case provided, have lately
 been shipped for exportation, on board of a certain vessel
 called the —, at —, in the said county, and are now
 there on board of the said vessel for the said purpose of expor-

tation, contrary to the Statute in that case made and provided ; whereby the said boxes of herrings are liable to be seized and sold pursuant to the said Statute ; These are therefore to require and command you, that with necessary and proper assistants, you do enter in the day time on board of the said vessel called the ——— wherever she may be within the said township of ———, and that you there seize and take into your custody and possession, all red or smoked herrings, in boxes or otherwise, which have not been inspected and branded by some Inspector of such herrings, which upon due search made you shall find on board of the said vessel ; and that within six days next after such seizure you do sell all such herrings at public auction, giving due notice of such sale, and you are hereby further required to pay over the nett proceeds of such sale to the overseers of the poor of the said township of ———, for the use of the poor of the said township, the reasonable charges of taking, keeping, and selling the said herrings being first deducted ; and you are hereby commanded to certify to me the said Justice, what you shall have done by virtue of this Warrant. Given under my hand and seal, at ———, in the said county, the — day of ———, in the year of our Lord one thousand eight hundred and ———.

A. M., J. P.

If the offence is for selling and delivering such herrings before inspection and marking, the Information and Warrant must be filled up accordingly, stating to what person or persons they were so sold and delivered ; and if the fish are in casks or other packages, or in bulk, the fact must be so stated in the Information and Warrant.

FISHERIES.

By the 10 G. 3, c. 10. 1 V. 162, If any fisherman in any vessel, bark, or boat, shall throw into the sea, within three leagues of any of the shores of this Province, any heads, bones, or other offal of the fish they may take, the master of such fishing vessel, bark or boat, shall upon due conviction thereof by the oath of one credible witness, before any one Justice of the Peace, or by view of any such Justice, pay for each and every such offence, the sum of five pounds, to be levied by distress and sale of the offender's goods and chattels, together with the charges of such distress and sale, rendering the overplus, (if any be) to the owner thereof ; one half of every such penalty

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to be to the person who shall inform and sue for the same, and the other half to be paid into His Majesty's Treasury for the use of the Province. Provided, that fishermen in boats, who split and dress their fish on shore, may throw the offal of their fish into what is called the land wash. *Perpetual*

By the 15 and 16 G. 3, c. 10. 1 V. 199, "General or Special Sessions may, annually, make regulations for river fisheries, and impose a penalty for breach thereof, not exceeding ten pounds; and when such penalty shall not exceed twenty shillings, the same to be recovered before one Justice, and when above that sum, and not exceeding three pounds, before two Justices. Said Sessions may also appoint overseers of such fisheries, who shall remove any net or other incumbrance found in the rivers contrary to such regulations; and if no person shall appear to claim the same within ten days after public notice thereof given, such net or seine, with the fish found therein, shall be forfeited and sold to satisfy the said penalties; and the overplus, if any, shall be paid to the Overseers of the poor for the use of the poor of the township where the offence was committed. Nothing in the Act shall extend to those rivers where fish do not resort in seasons for spawning." This Act is made perpetual by 18 G. 3, c. 4. 1 V. 210.

By the 26 G. 3, c. 7. 1 V. 250, The Justices in Sessions may from time to time make regulations as to the manner of placing nets and seines in all such havens, rivers, creeks and harbours as they shall judge necessary, and under such penalty as is expressed in the Act of the 3 G. 3, c. 2. 1 V. 89. By this last mentioned Act, persons transgressing the regulations made under the same, shall forfeit ten pounds, one half thereof to the informer, and the other half to the poor of the township where the offence was committed, to be recovered in any Court of Record. The foregoing Act of the 26 G. 3, c. 7, is made perpetual by the 48 G. 3, c. 18. 2 V. 21.

By the 10 G. 4, c. 40. 4 V. 66, Persons who shall place any hedge, weir, fish-garth, net, seine, eel-pot, or other incumbrance, in or across any river, brook, stream, or other place where eels resort, between the first day of May, and the twentieth day of June, shall for each such incumbrance, on due conviction thereof before any two Justices, on the oath of one credible witness or more, forfeit and pay a sum not exceeding five pounds nor less than forty shillings, with costs of suit; one half thereof to the informer, and the other half to the poor of the township where the offence was committed; and it shall be lawful for any overseer of the river fishery, or constable, or other person within the said limited time, to seize and remove any such incumbrance, and the same shall be thereupon

sold by an order from any two Justices, who are authorised to grant the same, upon the oath of the person who made the seizure ; and the nett amount of such sale, after deducting all charges, shall be equally divided between the person making such seizure, and the poor of the township where such seizure was made. All persons may require the aid of a constable, or the overseer of the river fishery, for the purpose of removing any such incumbrances, who on refusal to afford such aid, on being required, may be prosecuted at the next General Sessions by information or indictment, and if convicted, shall be fined as in other cases of neglect of duty. The conviction of offenders shall be in the Form following, to wit :—

County of } BE it Remembered, that on the — day of
— to wit. } —, in the year of our Lord —, A. B. was
convicted before us, two of His Majesty's Justices of the
peace for the county aforesaid, of setting one [or more as the
case may be] hedge, weir, fish-garth, net, seine, eel pot, or
other incumbrance, on this — day of —, in the year afore-
said, contrary to the Act in that case made and provided.
Given under our hands and seals the day and year first afore-
said "

Sec. 4. Nothing in the Act shall extend to, or alter the rights of private property in the river fisheries, or to prevent any person from setting nets within the times limited by this Act, for taking salmon, bass, shad, or gaspereau according to such regulations as are now provided for by law.

Sec. 5. The prosecutor or defendant in any prosecution under the Act, may appeal from the judgment of the Justices, or of the Sessions, to the Supreme Court at its next sitting within the county, and the appellant shall be entitled to a new trial, which such Court shall grant in a summary manner, and the party obtaining judgment shall be allowed such costs as to the Court shall seem reasonable. *Annual.*

Directions as to prosecutions before Justices, for the recovery of the penalties imposed by the foregoing Statutes, and also the Forms required, will be found respectively under the Titles,—Information ; Summons ; Conviction ; Distress.

By the 5 W. 4, c. 40. 4 V. 426, All coasting vessels under sixty tons burthen, owned in this Province, and coasting along the shores between Yarmouth and Canso, shall have a piece of plank or iron affixed and well secured to the bottom of the keel, and level therewith, which shall extend aft at least six

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inches beyond the aperture left by the stern post and rudder. And the owner or master of any such coasting vessel, not so furnished, running foul of any net, set off any harbour, bay, or river, upon the said coast, shall be liable to a penalty not exceeding five pounds, to be recovered by the person sustaining the damage, before any two Justices of the county wherein the damage was done. Provided, that this Act shall not be construed to prevent the person injured seeking a remedy by an action at common law. *Annual.*

NOTE. It will be observed, that no final process, or remedy is provided or directed by this Statute, whereby the penalty may be levied, or the payment thereof otherwise enforced.

FLOUR.

By the 3 G. 3, c. 3. 1 V. 87, All flour, biscuit or ship bread, shall be sold, bartered, or exchanged, by weight only; and every person who shall sell, barter, or exchange, any of the same, by the cask or in any other manner than by weight, shall forfeit the whole quantity thereof which has been sold in any other way; and on conviction of such offence shall further forfeit the sum of twenty shillings for every hundred weight, and so in proportion for a greater or less quantity of such flour, biscuit, or ship bread, so sold, bartered, or exchanged; to be recovered, together with the costs of prosecution, on the oath of one credible witness, before any two Justices of the Peace for the county where the offence was committed. All forfeitures and penalties incurred, and arising by the Act, shall be applied and disposed of in manner following,—All flour, biscuit, or ship bread so forfeited, shall be applied to the use of the poor of the town or place where the offence was committed; and all other penalties shall be for the use of the person who shall inform and sue for the same. Prosecutions under the Act shall be commenced within ten days after the offence committed. *Perpetual.*

Flour and Biscuit to be sold by Weight.

By the 29 G. 3, c. 10. 1 V. 273, All meal or flour made of Indian corn, buckwheat, rye or any other species of grain, in casks or otherwise, shall be sold, bartered, or exchanged by weight only, and in no other way or manner whatsoever; and all persons herein offending, shall be liable to the penalties and forfeitures mentioned in the foregoing Act of the 3 G. 3, c. 3. *Perpetual.*

All Meal and Flour to be sold by Weight.

Inspection of
Flour & Meal.

By the 3 W. 4, c. 15. 4 V. 200, The Governor may appoint at every port of entry, an Inspector and Weigher of flour and meal, who may appoint deputies. All wheat and rye flour, corn meal, and buckwheat meal, imported in barrels and half barrels, shall immediately upon being landed, and before being sold or offered for sale, or re-shipped, or taken out of the warehouse for consumption in this Province, or sent from the place where the same was landed, be inspected and weighed by the Inspector for such port or his deputy ; and each barrel shall contain not less than one hundred and ninety six pounds, net weight, and each half barrel not less than ninety eight pounds, net weight of flour or meal. Inspectors shall see that they contain the said quantities respectively ; and shall brand every barrel and half barrel thereof containing such quantities, with the initials of his christian and surname, and with the letter S for Superfine, F for Fine, and M for Middlings, as the case may be ; and BAD for Bad, if the same shall not be good, sweet and wholesome. And every barrel, and half barrel of flour or meal, of any of the said descriptions, imported, which after landing shall be sold or offered for sale, removed, or re-shipped for consumption in the Province, without having been previously so inspected, weighed and marked as aforesaid ; or which shall have been re-packed or found deficient in the weight, or quality denoted by such marks, shall be liable to seizure by any Inspector or deputy, or any officer of the Customs, or of Excise, or seizing officer, and may, if not of higher value than five pounds, be declared forfeited to His Majesty, by and before any two Justices of the county ; or if of higher value, in any Court of Record ; and the person who shall have committed any such offence, shall forfeit the sum of ten shillings for every such barrel, and five shillings for every such half barrel thereof, and sixpence for every pound weight so deficient, to be recovered as hereinafter provided ; one half of the nett proceeds of such seizures and penalties to be paid to the person who shall seize, or inform, or sue for the same, and the residue to the Commissioners or Overseers of the poor, for the use of the poor of the place where the offence was committed ; and such offender shall be liable to, and shall pay and make good to the buyer, or person from whom the same may have been so seized, or in whose possession the same may have been found, all monies, loss, or damage, by him or them paid, incurred, or sustained, in consequence of such seizure ; to be recovered either by action of debt, or for so much money had and received by such seller to the use of such buyer, or person sustaining such loss or damage. Inspectors and their deputies shall be allowed for inspecting, weighing, and marking each

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barrel,—three pence ; and each half barrel,—one penny half-penny ; to be paid by the owner, seller, importer, or consignee.

Sec. 6. Inspectors or deputies shall forfeit forty shillings for every barrel, and twenty shillings for every half barrel of flour or meal which they shall inspect, weigh, brand, or mark, in any manner or way contrary to the Act ; and for every other offence against the Act, they shall forfeit twenty pounds ; such forfeitures and penalties to be recovered and levied as hereinafter directed, and one half of the proceeds thereof to be paid to the person who shall inform or prosecute for the same, and the other half to the Commissioners or Overseers of the poor of the place where the offence was committed.

Sec. 7. All forfeitures, penalties, and sums of money, imposed, or declared and made payable by the Act, shall be recovered with costs of suit in the name of the person suing for the same, in like manner as debts ; either in any Court of Record, or before any one or more of the Justices of the Peace, according to the amount of such penalties, forfeitures, or sums, with reference to the jurisdiction of such Courts and Justices, in cases of debt ; and shall be levied in like manner as in cases of debt, and be applied as herein before provided. Provided, that all flour and meal, imported and deposited within any bonded warehouse, and therefrom directly shipped for exportation out of the Province, shall be altogether exempt and free from the regulations of the Act.

Sec. 9. All flour and meal, manufactured within the Province, and brought to market, and offered or exposed for sale, in barrels, half barrels, or casks of any kind, shall immediately on being so brought to market, and before being offered for sale, be weighed and inspected ; and the casks containing the same be marked by the persons, and in the manner, and under the penalties herein before mentioned. And such flour and meal shall be subject to all the clauses, regulations, and provisions herein before contained. Inspectors may affix a tare for the barrels and half barrels, according to the best of their judgment ; but if the same is disputed by the buyer or seller, the cask shall be unpacked, and the expense attending the unpacking and repacking, shall be paid by the party complaining. The Act shall not go into operation in any county or district, except in the district of Halifax, and county of Cape Breton, without the special order of the Commander-in-chief, to be made upon the application of the Court of General Sessions for any such county or district. *Annual.*

By the 4 W. 4, c. 15. 4 V. 269, Every barrel of corn meal, not kiln dried, shall contain not less than one hundred

and sixty-eight pounds, net weight, and shall be so branded. And on the importation of any flour or meal, intended for exportation, the owner, or importer, may either immediately tranship, and export; or if found necessary may store the same until such re-shipment, without such flour or meal being liable to the operation of regulations of the foregoing Act. Provided, that notice of such re-shipment be given to the Inspector. *Annual.*

By the 6 W. 4, c. 4, Sess. 1836. If the owner or importer of any flour, or meal, imported for exportation, and stored in any private warehouse for such purpose, shall re-ship the same without notice to the Inspector, as required by the proviso to the last clause of the before recited Act of 4 W. 4, c. 15, he shall forfeit and pay for every barrel, or half barrel of flour or meal so re-shipped without such notice, the sum of two shillings and sixpence, to be recovered and applied in manner as any forfeitures and sums of money are made recoverable, and are to be applied, under the sixth clause of the before recited Act 3 W. 4, c. 15.

Sec. 5. When any barrel or half barrel of flour or meal, weighed and branded, shall be emptied, before the same shall be refilled, the brands thereon made by the Inspector and weigher, or his deputy, shall be erased; and any person refilling, or procuring to be refilled, any such barrel, or half barrel, when emptied, without erasing the brands, shall forfeit and pay for every such barrel or half barrel, so refilled, a penalty, of two shillings and sixpence; to be recovered and applied as aforesaid. *Duration not limited.*

Directions.

The proceedings under the two Acts first recited under this Title, which regard the selling of flour and biscuit by weight only, will be the same until conviction, as in ordinary cases of recovering penalties before Justices, and for which, with the Forms required, see Titles,—Information; Summons; Conviction. It would seem that neither a Warrant of distress against the goods of the offender, nor any process against his body, can be issued upon conviction under either of the said first mentioned Acts, as no final process of any kind, is thereby directed or authorized.

It will be observed, that by the first of the foregoing Acts, concerning the inspection of flour and meal, it is directed that all forfeitures, penalties, and sums of money under the same, are to be recovered as debts of the like amount, before any Court, or Justice or Justices having jurisdiction over any such amount. It follows, therefore, that if any such forfeitures, penalties or sums, do not exceed £3, the suit may be before one Justice; and if above that sum, but not exceeding £5, be-

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fore two Justices ; which sums may be sued for, recovered, and levied in the same manner as in the case of debts between private parties ; for directions as to the proceedings in which cases, with the requisite forms, see Title,—Summary Trials. The penalties imposed by the last mentioned Act, are also directed to be sued for, recovered, and applied in the same manner.



FORCIBLE ENTRY & DETAINER.

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By the 32 G. 2. c. 3. 1 V. 6. Upon complaint on oath made to any Justice of the Peace, of any wrongful and forcible entry made into any houses, lands, tenements, or other possessions, lying within any town or place where such Justice resides, or of any wrongful detainer, or withholding with force, after possession demanded, of any houses, lands, tenements, or other possessions, every such Justice shall by Warrant under his hand and seal, directed to the Constables of such town, cause such offender or offenders to be arrested and detained in custody, until he, she, or they, find sufficient securities for his, her, or their personal appearance at the next General Sessions of the Peace, there to answer such complaint ; and for want of such security to be committed to prison. The Sessions shall enquire of such forcible entry and detainer, and if the same is on trial found by a Jury, the party grieved shall again be put into possession of such lands, &c. and may by action of trespass recover treble damages and costs of suit. The Act shall not extend unto any person who has had the occupation, or been in quiet possession of any lands, tenements, or possessions for three whole years, together, next before, and his or her estate or estates, therein not ended or determined. *Perpetual.*

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A forcible entry or detainer is committed, by violently taking, or keeping possession of lands, or tenements, with menaces, force, and arms, and without the authority of law. If one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed, or unarmed, in his way to the church or market, or for such like purpose, without doing any act which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry thereinto. But if a person enter into another man's house, or ground, either with apparent violence offered to the person of any other, or furnished with weapons or company which may offer fear, though it be but to cut or take

What is a
 Forcible Entry
 and Detainer.

away another man's corn, grass, or other goods, or to sell or crop wood, or to do any other like trespass, and though he do not put the party out of his possession, yet it seems to be a forcible entry. But if the entry were peaceable, and after such entry made, they cut or take away any other man's corn, grass, wood, or other goods, without apparent violence or force, though such acts are counted a disseizin with force, yet they are not punishable as forcible entries. But if he enter peaceably, and there shall with force and violence, cut or take away any corn, grass, or wood ; or shall forcibly, or wrongfully carry away any other goods there being, this seems to be a forcible entry. And in general, it seems clear, that to denominate the entry forcible, it ought to be accompanied with some circumstances of actual *violence or terror* ; and therefore, that an entry which hath no other force than such as is implied by the law in every trespass whatsoever, does not amount to this offence of a forcible entry. As to the matter of *violence*, it seems to be agreed, that an entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him, if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in it or not, especially if it be a dwelling house ; and perhaps also by an act of outrage after the entry, as by carrying away the parties' goods ; but it seems that an entry is not forcible by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *strong hand*, or *multitude of people* ; and it hath been holden that an entry into a house through a window, or by opening a door with a key, is not forcible. In respect of the circumstances of *terror*, it is to be observed, that whenever a man, either by his behaviour, or speech at the time of his entry, gives those who are in possession, just cause to fear that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible, whether he cause such a terror by carrying with him such an unusual number of attendants, or by arming himself in such a manner, as plainly intimates such a design, or by actually threatening to kill, maim, or beat, those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force ; as if one say, that he will keep his possession in spite of all men, or the like. But it seems that no entry shall be judged forcible, from any threatening to spoil another's *goods*, or to destroy his cattle, or to do him any other such like damage which is not personal. However, it is clear that it may be committed by a single person, as well as by twenty. But nevertheless, all those who ac-

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company a man when he makes a forcible entry, shall be judged to enter with him, whether they actually come upon the lands or not. It seems certain that the same circumstances of violence or terror which will make an entry forcible, will make a detainer forcible also. And a detainer may be forcible, whether the entry were forcible or not. 2 Burns. 419-21.

*Information of Forcible Entry and Detainer, on 32 G. 2. c. 3,
1 V. 6.*

County of } THE information and complaint of A. I. of
} —, in the said county of — yeoman, made
on oath before me A. M. Esquire, one of His Majesty's Justices
of the peace in and for the said county, the — day of —,
in the year of our Lord one thousand eight hundred and —,

Who says, that on the — day of —, in the year afore-
said, he the said complainant, was lawfully and peaceably
possessed and in the occupation of a certain dwelling house of
him the said complainant, with the appurtenances situate and
being at — in the said county, and that while he the com-
plainant was so lawfully and peaceably possessed, and in the
occupation thereof, A. O. and B. O., of —, in the county
aforesaid, yeomen, on the said — day of —, in the year
aforesaid, did unlawfully and forcibly, and with a strong hand,
enter into the said dwelling house, and with force and violence,
did unlawfully expel and put out him the said complainant from
his said possession, and occupation of his said dwelling house
and the appurtenances, and with force and violence, and a
strong hand, do still unlawfully detain and keep the possession
of the said dwelling house and appurtenances, and prevent him
the said complainant from re-entering into the occupation and
possession thereof, contrary to the Statute in such case made
and provided.

And hereupon the said A. I. prayeth a Warrant of me the
said Justice, to issue against the said A. O. and B. O. to
compel them to answer unto the said complaint.

Before me, A. I.
A. M., J. P.

Warrant thereupon.

County of } To A. C., one of the Constables of the
} township of —, in the said county, and to each
and every of the other Constables of the said township.

WHEREAS A. I., of — in the said county of —,
yeoman, hath this day made information and complaint, upon

oath, before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, that on the — day of —, in the year of our Lord one thousand eight hundred and —, he the said A. I. was lawfully and peaceably possessed, and in the occupation of a certain dwelling house of him the said A. I., with the appurtenances, situate and being at —, in the county aforesaid, and that while he the said A. I. was so lawfully and peaceably possessed, and in the occupation thereof, A. O. and B. O., of — in the county aforesaid, yeomen, on the said — day of —, in the year aforesaid, did unlawfully, and forcibly, and with a strong hand, enter into the said dwelling house, and with force and violence, did unlawfully expel and put out him, the said A. I., from his said possession and occupation of his said dwelling house, and the appurtenances, and with force and violence, and a strong hand, do still unlawfully detain and keep the possession of the said dwelling house and appurtenances, and prevent him the said A. I. from re-entering into the occupation and possession thereof, contrary to the Statute in such case made and provided; These are therefore to command you, and every of you, in His Majesty's name, forthwith to apprehend and bring before me, the bodies of the said A. O. and B. O., to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal at — aforesaid, the — day of —, in the year aforesaid.

A. M., J. P.

Directions.

When the parties are brought before the Justice upon the foregoing Warrant, he must require of them to find a surety or sureties to be bound with them, and if they procure the same, the Justice must bind them all in recognizance, in the usual form, for the appearance of the parties charged, at the next General Sessions, to answer to the complaint. The parties charged may be bound in £40 each, and the sureties in £20 each, or in other lesser or greater sums, at the discretion of the Justice, according to the nature and circumstances of the case. He should also bind over the complainant to appear at the Sessions and prosecute, and must also make minutes or memorandums of such recognizances, in the manner, and similar to the forms directed and given in the case of assault and battery, and must send such memorandums into the office of the Clerk of the Peace, before or at the next meeting of the General Sessions. If the parties arrested, refuse, or fail to find such sureties, and to become so bound, the Justice must send them to gaol under a written commitment.

The Forms of Recognizances,—of the memorandums there-

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of, and of a Commitment, which may all be readily filled up so as to answer, will be found under the Titles,—Assault and Battery, and Commitment.

For directions and proceedings, in the case of tenants overholding the possession of premises after the expiration of their terms, see Title,—Landlord and Tenant.

FORGERY.

FORGERY is an offence at common law, and in many cases an offence also by Statute. Forgery at the common law is an offence, in falsely and fraudulently making or altering any manner of record, or any other authentic matter of a public nature, as a parish register, or any deed, will, privy seal, and the like. Also, the counterfeiting of any writing, with a fraudulent intent, whereby another may be prejudiced, (it is immaterial whether the party be actually injured or not,) is a forgery at common law. 2 *Burn's*, 444.

By a Resolution of the Governor and Council, contained in the first Volume of the Provincial Acts, page 5, and referred to and confirmed by the Statute of the 32 G. 2, c. 2, § 11. 1 V. 3, It is declared, that if any person or persons shall forge or counterfeit, any entry of the acknowledgment of any such memorial, certificate, or endorsement, as is therein directed to be made of any deed, conveyance, or mortgage, and shall be thereof lawfully convicted, such person or persons shall incur and be liable to such pains and penalties, as in and by an Act of Parliament made in the fifth year of Queen Elizabeth, (entitled an Act against Forgers of False Deeds and Writings,) are imposed upon persons, for forging and publishing of all false deeds, charters, or writings sealed, court rolls or wills, whereby the freehold or inheritance of any person or persons, of, in, or unto any lands, tenements, or hereditaments, shall or may be molested, troubled, or charged.

And by the 32 G. 2, c. 20, § 8. 1 V. 30, If any person shall forge, or counterfeit, or procure to be forged or counterfeited, or willingly assist in the forging or counterfeiting, any deed, or writing sealed, or last will or testament; or shall publish, or shew forth in evidence, any such forged or counterfeited deed, writing sealed, or last will or testament, as true, knowing the same to be false; or if any person shall forge or counterfeit, or procure to be forged or counterfeited, or willingly assist in the forging or counterfeiting, any bond, writing obligatory, bill of exchange, promissory note for the payment

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of money, or any endorsement or assignment of any bill of exchange, or of such promissory note; or any acquittance or receipt, either for money or goods; or any discharge of any action, account, debt, demand, or any personal thing, with intention to defraud any person, or shall utter or publish as true, any forged or counterfeited bond, writing obligatory, bill of exchange, or such promissory note for the payment of money, or such acquittance, receipt, or discharge, with intention to defraud any person, knowing the same to be forged, or counterfeited; every such person being thereof convicted at the Court of Assize and General Gaol delivery, or Sessions of the Peace, shall be set in the pillory, and there have one of his ears cut off, and shall also suffer imprisonment for the space of one year, without bail or mainprize; and the party grieved shall recover his double costs and damages, to be assessed in the Court where such conviction shall be. *Perpetual.*

By the 56 G. 3, c. 6. 2 V. 201, Imprisonment in a Bridewell may be adjudged, instead of the punishment prescribed in the foregoing Statute.

Treasury
Notes.

By the 9 G. 4, c. 3. 4 V. 22; 10 G. 4, c. 43. 4 V. 69; 11 G. 3, c. 9. 4 V. 82; and 2 W. 4, c. 64. 4 V. 191, respectively, It is enacted and declared, that if any person or persons shall counterfeit any Treasury note or notes, issued or hereafter to be issued, by virtue of any of the said Acts, or of any former or other Act, or alter any of the same, so that they shall appear to be of greater value than when originally issued; or shall knowingly pass, or give in payment, any of the said notes, so counterfeited, or altered; every person convicted thereof, shall be imprisoned for a term not exceeding seven years, in the Bridewell, and there kept at hard labour, and shall pay all charges of the prosecution. *Duration of these Statutes not limited.*

Bank Bills &
Notes.

By the 4 W. 4, c. 24, § 9. 4 V. 274, If any person or persons shall make, forge, or counterfeit, or cause or procure to be made, forged or counterfeited, any such undertaking as is mentioned in the second clause of this Act, or alter, or cause or procure to be altered, any such undertaking, so that it shall appear to be of greater value than when originally issued, or shall knowingly offer, or pass, or give in payment, any such undertaking so forged, counterfeited, or altered, every person convicted of such offence, shall be adjudged guilty of a misdemeanor, and shall be imprisoned for a term not exceeding seven years, in the Bridewell, and there kept at hard labour, and shall pay all charges of prosecution. The undertakings referred to in the foregoing clause, are described in the said second clause of the Act, to be "Any undertakings now issued,

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or hereafter to be issued, and whether made, designed, or purporting to be promissory notes, or Bank notes, or bills, or issued, or purporting to be issued, as and for, and to serve the like purposes as notes, or bills of bankers, or of a Banking Company, or as and for paper money, or circulating currency, and whether the same be payable to a real or fictitious person, or to the bearer thereof, or purport or be designed to be negotiable, or transferable by endorsement, or delivery; or whether the same be, or purport to be payable absolutely, in gold or silver, or either in specie, gold or silver, or in notes of the Provincial Treasury, or other body corporate, or politic, company, partnership, person, or persons whomsoever, or in any other mode, and whatsoever be the sum for which such writings respectively shall be made." *Perpetual.*

It is considered sufficient here, only briefly to mention, that on a complaint made to a Justice of a forgery under any of the before mentioned Statutes, he must proceed in the same manner as in the case of informations of felonies,—by taking the information in the usual form, in writing, and on oath, and by issuing a warrant to apprehend the party. When he is brought forward on the warrant, it is not imperative on the Justice to take written examinations, as on charges of felony. If the prisoner desires to be bailed, another Justice must be called in, and if the sureties offered are approved of by the Justices, they must be bound with the prisoner, in recognizance in the usual form, for his appearance at the next term of that Court to which the proceedings are to be sent. If the charge is upon the first mentioned Statute, which relates to the registry of deeds, or upon any of the foregoing Statutes respecting Treasury notes, or upon the Act which relates to Bank bills or notes, the recognizance must be for the appearance of the prisoner at the Supreme Court; but if it is upon the before mentioned general Act relating to wills, deeds, and other writings, the recognizance must be for his appearance at the next term of the Supreme Court, or of the General Sessions, whichever Court will first meet. The complainant and other witnesses must also be bound in recognizance, for appearance at the Court, and to give evidence. The Justices must make memorandums of the recognizances, according to the Forms which will be found under the Title,—“Recognizance,” and before, or at the meeting of the Court to which the party has been bound over, they must hand in the same to the Clerk of such Court. If the prisoner refuse, or fail to find sufficient sureties, the Justice or Justices must, as in other similar cases, send him to gaol under a written commitment. More particular directions, if needed, and the requi-

Directions.

site Forms, which may readily be filled up so as to serve, will be found under the respective Titles,—Information ; Warrant ; Bail ; Recognizance ; Commitment.

Certificates of
Quarantine.

By the 2 W. 4, c. 13. 4 V. 143, If any person shall knowingly, or wilfully, forge, or counterfeit, interline, erase, or alter, or procure to be forged, or counterfeited, interlined, erased, or altered, any certificates directed or required to be granted by any order of the Governor in Council, now in force, or hereafter to be made, touching quarantine, or shall publish any such forged or counterfeited, interlined, erased, or altered certificate, knowing the same to be forged, or counterfeited, interlined, erased or altered, or shall knowingly and wilfully utter and publish any such certificate, with intent to obtain the effect of a true certificate, to be given thereto, knowing the contents of such certificate to be false, he or she shall be guilty of felony. *Annual.*

Directions.

The forms of the Information and Warrant, on a charge of forging the certificate mentioned in the foregoing clause, will be the same as in the other cases of forgery already mentioned; but after the party charged is brought before the Justice, the proceedings will be somewhat different. As this offence is by the clause declared a felony, examinations in writing must be taken of the prisoner, and of the witnesses, as in other cases of felony, in the manner and according to the Forms directed and given under the Title,—Examination. A party charged with this offence, may or may not be let to bail by two Justices, as they may see fit in their discretion, according to the circumstances of the case. In the event of bailing, the proceedings will be the same as in the other cases of forgery already mentioned, and the party must be bound for appearance at the Supreme Court, whither the examinations and minutes of Recognizances must be sent. If the prisoner is committed, the requisite Form will readily be framed from the general Form under the Title,—Commitment.

FREESTONE.

By the 56 G. 3, c. 21. 2 V. 210. All Freestone sold or offered for sale, shall be inspected and measured by an Inspector of bricks and lime, who shall receive from the seller for all Freestone of the description called flagstones, at the rate of nine-pence per ton, and for all other kinds sixpence per ton. *Perpetual.*

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GAMING.

By the 33 G. 2, c. 1. 1 V. 47. It shall and may be lawful for any two or more Justices of the Peace, to enter into any public houses, suspected of keeping any gaming tables, and to order and direct the keepers of such gaming tables, if any such shall be found therein, to remove the same within forty-eight hours, as a public nuisance; and any person refusing or neglecting to obey the order of such Justices, the said Justices shall have power to break and prostrate such public gaming tables, and also to require sufficient security from persons keeping such public gaming houses, for their good behaviour during twelve months, or for their appearance at the next Quarter Sessions, there to be prosecuted for offending against this Act; and on conviction to be either fined, or imprisoned, as the Court shall direct. *Perpetual.*

The Form of a Recognizance for the good behaviour, and also of one for the appearance at the Sessions, required by the foregoing clause, will both be found under the Title,—Surety for the good behaviour.

GAOLS AND GAOLERS.

THE gaol itself is the King's, for the public good; but the Sheriff has the custody, rule and keeping of it, and of the prisoners confined therein. All felons shall be imprisoned in the common gaol, and not elsewhere. And if the gaoler refuse to receive a felon, by the delivery of any constable, or take any thing for receiving him, he shall be punished for the same by the Justices of gaol delivery. In all cases, where a man is committed to prison, especially if it be for felony, or upon an execution; or but for a trespass, or other offence, every gaoler ought to keep such prisoner in safe and close custody; safe, that he cannot escape; and close, without conference with others, or intelligence of things abroad. Therefore, if the gaoler shall license his prisoner to go abroad for a time, and then to come again, or to go abroad with a keeper, though they come again, yet these are escapes. If the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler, by the common law. If the gaoler voluntarily suffer a prisoner to escape, he shall be punished in the same manner as the prisoner ought to have been, who escaped; and if he negligently permit him to es-

cape, he shall be punished by fine and imprisonment. And the sheriff shall answer for him. If a gaoler detain a prisoner in gaol after his acquittal, unless it be for his fees, (not for meat, drink, or lodging,) this is an unlawful imprisonment. *2 Burns.* Title,—Gaols.

Appropriating
part of a Gaol
as a Work-
house.

By the 32 G. 3, c. 5. 1 V. 293. The Justices, and Grand Jury in General Sessions, in the several counties and districts, may provide proper buildings or appropriate a certain part of the county gaol, as a work-house, or house of correction; the expense of establishing which, shall be raised by presentment and assessment in the usual mode. The Sessions or any one Justice out of Court, may commit to such house of correction, all persons of the descriptions mentioned in the second clause of the Act of the 33 G. 2, c. 1. 1 V. 41. *Perpetual.*

Persons to be
Committed to
Workhouse.

By the clause here referred to, the Sessions, or a single Justice, may, on due conviction, commit, for punishment according to the rules of such house of correction, all idle and disorderly persons, beggars, persons practising unlawful games, fortune-tellers, common drunkards, persons of lewd behaviour, vagabonds, runaways, stubborn servants, and children, and persons mis-spending their time to the injury of their families.—*Perpetual.*

By the 5 W. 4, c. 13. 4 V. 385. Money may be presented in the Sessions and raised in the usual manner, for building and repairing gaols. *Temporary.*

Selling or us-
ing Spirituous
Liquors in
Gaol.

By the 4 W. 4, c. 36. 4 V. 285, If any gaoler, or the keeper of any prison, or other person or persons, shall either by themselves, or their wives, or any of their children, or their servants, substitutes or agents, directly, or indirectly, sell, barter, exchange, or deliver, or willingly or knowingly suffer, or permit, or cause to be sold, bartered, exchanged, or delivered, to any prisoner, or prisoners, or other person or persons whomsoever, any rum, brandy, gin, or any other distilled spirituous liquors, mixed or unmixed, by whatever name or names the same are or may be called, or known, in any gaol or prison, or gaol yard, or within the limits of any gaol or prison, or in any room or apartment, or other part of any house, or building, wherein any gaol or prison is, or may be kept, or situate; or if any person or persons shall bring, or introduce into any gaol or prison, or gaol yard, or limits of any gaol, or prison, to be used, drunk, or consumed therein, by any prisoner or prisoners, person or persons, confined, or detained within such gaol or prison, or gaol-yard, or the limits of any such gaol, or prison, such gaoler or keeper, or other person or persons so offending, in either of the said cases, being thereof convicted before any two Justices of the Peace for the country or dis-

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strict wherein such gaol or prison may be situate, upon the oath of any one or more credible witness, or witnesses, shall forfeit and pay a fine or penalty of three pounds; to be levied by warrant of distress under the hands and seals of the said two Justices, of and upon the goods and chattels of the offender, or offenders so convicted; and shall be paid and applied, one half to the person who will give information for the same, and the other half to the Clerk of the Licenses for the county or district wherein such offence shall have been committed, to be by him applied in like manner as the funds receivable by him for licensed houses are directed to be applied; and in case the said offender or offenders, shall not have sufficient goods and chattels whereon to levy the distress aforesaid, and to satisfy the said fine, then such offender or offenders shall be committed to gaol, to be there kept and detained in close confinement for two months, or until such fine be paid. And any gaoler, or keeper of a prison, who shall be convicted as aforesaid a second time, shall thereupon, in addition to paying the fine, or undergoing the confinement herein before mentioned, be thereafter absolutely disqualified from holding such situation of a gaoler, or keeper of a prison as aforesaid, and shall be therefrom forthwith removed.

Sec. 3. All prosecutions under the Act shall be in the name of the Clerk of the Licenses, and it shall be imperative upon the said Clerk, upon information given to him of any offence against this Act, forthwith to prosecute for the fine hereby imposed.

Sec. 4. Provided, that nothing in the Act contained shall extend to prevent the introducing into any gaol, or prison, such limited and restricted quantity of rum, brandy, gin, or other distilled spirituous liquors, for any sick prisoner, or other sick person who may be confined or resident in such gaol or prison, as may, by the physician, or medical attendant of such sick prisoner, or other sick person, be particularly mentioned, allowed, and prescribed in writing, as necessary for the use of such sick prisoner, or other sick person.

Sec. 5. Provided, also, that when the limits of any gaol or prison, shall extend beyond the gaol yard, and include within the same any house or building, other than the said gaol or prison, nothing in this Act contained shall extend to such limits, unless so far as respects the selling, or delivering, or bringing, or conveying of any rum, brandy, gin, or other distilled spirituous liquors, to any prisoner or prisoners, confined within such gaol or prison, or the limits thereof. *Perpetual.*

The proceedings and Forms under this last mentioned Directions.

Statute, except the slight difference obviously requisite in stating the offence in the Forms, will be the same as in the case of prosecutions by the Clerk of the Licenses, for selling spirituous liquors without license, the requisite directions and Forms in which latter case will be found under the Title,—*Spirituous Liquors*.

It will be observed, however, that there is no time limited for the commencement of a prosecution for any offence against this Statute, and also, that no charges of prosecution are allowed, and therefore none can be adjudged. The penalty, also, is exactly specified, and must be the same in every case.

GOOD BEHAVIOUR, see SURETY, &c.

GRAIN.

By the 32 G. 3, c. 4. 1 V. 291, In the first General Sessions in every year, Measurers shall be appointed of all species of corn, or grain, sold or offered for sale. Grain exposed for sale shall not be deemed merchantable, unless it be of the following standard weight, to say—

Wheat,	shall weigh per	bushel,—	fifty-eight pounds.	} Avoir- dupoise.
Rye	do.	do.	fifty-six pounds.	
Indian corn	do.	do.	fifty-eight pounds.	
Barley	do.	do.	forty-eight pounds.	
Oats	do.	do.	thirty-four pounds.	
Pease	do.	do.	sixty pounds.	

And all grain imported or brought to market for sale, shall, on request of the purchaser, be inspected and measured by the sworn Inspectors of the town or port where the same shall be brought for sale. If any corn, or grain of any kind, shall be imported or brought for sale within any port or place in the Province, which shall not be merchantable, agreeable to the standard weight herein before appointed for each species of grain to weigh respectively, the Inspector or person measuring the same, if required either by the buyer, or seller thereof, shall add to each bushel, a quantity sufficient to make the same weigh equal to the standard herein before regulated for each particular species; and if such corn, or grain, shall weigh more than the standard weight aforesaid, he shall in like manner de-

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Sec. 4. Persons who shall export to any place out of the Province, any corn or grain of any kind, which shall weigh less than the standard weight herein before respectively appointed, or which shall not have been inspected and measured by an Inspector appointed under this Act, previous to such exportation, shall forfeit and pay the sum of one shilling for every bushel which they shall so export; the same to be recovered, on complaint before any one Justice of the Peace; one half of which penalty shall belong to the informer, or person prosecuting for the same, and the other half to the poor of the township from which such export was made.

Sec. 6. Persons appointed Inspectors of grain, who shall refuse to accept of such office, or who shall be guilty of any neglect, or misbehaviour in the execution of the duties thereof, shall forfeit and pay for the use of the poor in the town wherein they reside, a sum not exceeding three pounds, to be recovered before any two Justices of the Peace for the county.

Sec. 7. All grain imported into the Province, shall be subject to the foregoing regulations. *Perpetual.*

By the 56 G. 3, c. 4, 2 V. 200, All grain delivered from any vessel to any truckman, or other person, without having been duly and regularly admeasured by the proper officer appointed by the Court of Sessions to survey the same, shall be forfeited, or the value thereof, by the seller thereof, for the use of the poor of the township. And every measurer of grain, who shall undertake to attend the admeasurement of the same, from more than one vessel at the same time, shall forfeit for every such offence, the sum of forty shillings, to be recovered before any one Justice of the Peace, by warrant of distress, and to be applied for county purposes. Measurers of grain shall receive from the seller thereof, for all grain, (oats excepted,) at the rate of four shillings per hundred bushels, and for oats, two shillings per hundred bushels. *Perpetual.*

Measuring
Grain.

With regard to the first of the foregoing Statutes, as it does not direct or authorise any final process for levying the penalties thereby imposed, the same observation applies which has already been made, respecting other Statutes with the like omission, namely,—that if the party convicted, refuse or neglect to pay the penalty adjudged, the Justice, or Justices, cannot issue either a warrant of distress against his goods, or any process to commit his body to prison. It will be observed, that the Statute last recited, is not so defective, as it provides that the penalty shall be recovered by warrant of distress.

Directions.

Directions as to prosecutions for penalties, under either of the foregoing Statutes, until after conviction, and also the requisite Forms, will be found under the respective Titles,—Information ; Summons ; Conviction. A Form, which may readily be filled up to serve for a Warrant of Distress, on a Conviction under the last mentioned Statute, will be found under the Title,—Distress.

With respect to the forfeiture of grain, or the value thereof, mentioned in this Act, as no jurisdiction or authority is thereby given to Justices, with reference to such forfeiture, they have no power to take or direct any proceedings whatever, on the subject.

Tolls.

By the 4 W. 4, c. 45. 4 V. 290, The tolls hereafter to be taken by every miller, for the grinding of wheat, rye, barley, buck-wheat, or Indian corn, shall be one sixteenth part of the whole quantity brought to the mill to be ground, and no more ; to be ascertained by a sealed measure ; and for grinding oats, where the same shall not be kiln dried, shelled, and sifted,—one sixteenth part of the whole quantity brought to the mill to be ground, and no more ; to be ascertained as aforesaid ; and for kiln-drying, shelling, grinding, and sifting of oats,—one-eighth part of the whole quantity brought to the mill to be ground, and no more, to be ascertained as aforesaid. Every miller keeping suitable machinery for the hulling of barley, shall receive as toll for hulling the same,—one-sixth part of the whole quantity brought to the mill to be hulled, and no more ; to be ascertained as herein before mentioned. And every miller who shall keep in his mill a good and sufficient bolting machine, shall be obliged, if required so to do, to bolt the flour or meal, of all wheat, rye, buckwheat, or barley, or bolt or sift all flour, or meal, of Indian corn, ground at his mill ; and shall be allowed to take at the rate of one quart out of each bushel of grain or corn brought to the mill to be so ground, and bolted, or sifted, and no more, as and for the toll for bolting or sifting the same, in addition to the toll hereby allowed for grinding such wheat, rye, buckwheat, barley, or Indian corn. [By 5 W. 4, c. 5. 4 V. 357, This toll for bolting, or sifting, is reduced to one pint for each bushel.]

Sec. 4. If any Miller shall, in any case, demand and take any larger and greater toll for grinding, hulling, or bolting any grain, corn meal, or flour, than is herein before allowed and prescribed, such miller, being thereof legally convicted before any two Justices of the Peace for the county or district wherein such offence shall be committed, on the oath of one or more credible witness, or witnesses, shall forfeit and pay a penalty of

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Sec. 5. If any miller shall refuse to grind any grain or corn, for which his mill is prepared, the said grain or corn being clean, dry, and in good order; or if his mill be provided with bolting machinery, shall refuse to bolt any meal or flour, hereby required to be bolted, when he is requested so to do, or shall refuse to hull any barley, when required, the same being clean, dry, and in good order, and his mill having proper and suitable machinery for the hulling of barley, then and in either of such cases, any such miller so refusing, and not having some good and sufficient excuse for such refusal, being thereof legally convicted, in manner as herein before mentioned, shall forfeit and pay a penalty of two pounds, to be levied as aforesaid.

Sec. 6. Every miller shall at all times keep in his mill, properly fitted and erected in a convenient place, a good and sufficient beam and scales, with proper and legal weights, for the use of persons requiring grain or corn to be ground at such mill; and any miller neglecting to keep and have in his mill, such beam and scales and weights, so fitted and erected in manner aforesaid, being thereof lawfully convicted, as herein before mentioned, shall forfeit and pay a penalty of five pounds, to be levied as aforesaid.

Miller to keep
Scales and
Weights.

Sec. 7. All penalties recovered and levied under this Act, shall be paid and applied for the use of the poor of the town or place where the offence for which such penalty is imposed, was committed, and if no sufficient distress shall be found, to satisfy any such penalty, then the offender shall be committed to gaol, there to be confined, for a time not exceeding thirty days, or until the said penalty be paid.

Sec. 8. Every miller who shall be convicted as herein before mentioned, of demanding and taking any greater toll for the grinding, hulling, or bolting of any grain, corn, meal, or flour, in any case, shall in addition to the penalties hereby imposed for any such offence, forfeit the full value of the grain, corn, meal, or flour, which shall be demanded and taken by him as aforesaid, over and above the toll herein before mentioned and allowed; to be levied, together with the said penalty hereby imposed, and in the same manner, and to be paid to the owner or owners of the grain, corn, meal, or flour, whereon such excessive toll shall be demanded and taken.

Sec. 9. Repeals the Acts of 10 G. 3, for establishing tolls to be taken at Grist Mills, and 21st and 28th G. 3, in amendment thereof.

Sec. 10. Provides that this Act shall not extend to any other Mills than such as are propelled or worked by wind or water. *Perpetual.*

Directions.

This Statute is so plainly and accurately worded, that, it is conceived, intelligent and judicious Magistrates will find no difficulty as to any part of the proceedings before them, for the recovery and levying of the penalties. It will be observed, that all the penalties are to be recovered before two Justices, and that a warrant of distress is to issue against the goods of the party convicted, and if no goods can be found, he is to be committed to prison for a limited time, or until payment is sooner made. The proceedings therefore, will be the same as in all ordinary cases of prosecutions for the recovery of penalties; directions as to which, with the requisite Forms, to be filled up according to the facts of the complaint in each case, will be found under the respective Titles,—Information; Summons; Conviction; Distress; Commitment. It is proper however to observe, that as the value of the excessive toll taken, is to be levied from the party convicted, in addition to the penalty imposed, it will be the duty of the Justices, at the time of the conviction, to ascertain and determine that value, and to add the amount thereof to the penalty, and to adjudge the whole of such value and penalty, against the party, and to issue the warrant of distress for the full amount so made up.

 GRIST MILLS, see GRAIN.

 GUAGERS.

By the 1 G. 3, c. 9. 1 V. 72, The Governor shall appoint two Guagers for the port of Halifax, who shall be sworn to the faithful discharge of their duty, and who are authorised to guage all rum or other distilled spirituous liquors, which shall be imported into, or distilled within the same, and shall perform all such guaging, by the instrument commonly known by the name of Gunter's Callipers, and no other instrument whatsoever; and if any guager, to be appointed as aforesaid, shall neglect to attend, upon due notice given for the guaging any rum, or other distilled spirituous liquors, imported into, or distilled within the Province, he shall forfeit and pay for every such neglect, the sum of five pounds, with costs, upon conviction thereof by the oath of one credible witness, before any two Justices of the Peace; to be recovered by warrant of distress from under the hand and seal of said Justices; one moiety whereof to be paid to the person who shall inform and

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By the 32 G. 3, c. 3. 1 V. 291 (made in addition to, and amendment of the foregoing Act,) All casks containing rum, wine, and molasses, imported into this Province, shall be gauged by the sworn and established gauger, immediately after landing, and before removal from the wharf whereon it is landed; and the said gaugers shall mark with a marking iron, the quantity of gallons each cask contains, on the stave next the bung stave, or upon the head of each cask, with the two first letters of his name on the left hand of the quantity; all which to be done in a fair legible manner. And in lieu of the present allowance for gauging, such gauger shall receive for every cask exceeding ten, to be gauged by him at any one time and place, the following fees: for every puncheon,—three pence; for every hogshead or tierce,—two pence; and for every barrel,—one penny.

Sec. 2. If any gauger, appointed as aforesaid, shall neglect or refuse to do the duty enjoined by this and the above recited Act, he shall for each and every offence, forfeit and pay the sum of forty shillings, to be recovered before any one Justice of the Peace, by any person or persons who shall sue for the same; one moiety thereof to such person or persons, and the other moiety to the Overseers of the poor, for the use of the poor of the township to which such gauger belongs.

Provided, that until persons can be found in the outports of the Province, capable of gauging with callipers, it shall be lawful in such ports, to gauge with a rod, as also in the port of Halifax, when the parties consent. *Perpetual.*

It will be seen, that the first of the foregoing Statutes relates only to the port of Halifax, and applies to all distilled spirituous liquors imported into, or distilled within such port; while the latter Statute extends to the whole Province, but applies only to rum, wine, and molasses. With regard to the penalties, also, the latter Act imposes the penalty of forty shillings, on neglect of any duty enjoined either by this Act, or by the previous one. It would seem, therefore, that the clause in the first Act, respecting the penalty, is not in force, but is virtually repealed by the substitution, in all cases, of the penalty of forty shillings, imposed by the latter Act; and therefore, that this penalty is the only one which can be enforced against the gauger, for any offence under either of the Acts. As this latter Act does not direct or authorize any final process, for levying the penalty on a party convicted, it is quite clear, agreeably to what has been already advanced

Directions.

under previous Titles, respecting such omission in other Statutes, that upon any conviction under either of these Acts, the Justice will not be authorised to issue any such final process, either against the goods, or the body of the offender. Directions applicable to prosecutions before the Justice, for the recovery of the penalty imposed by the latter Statute, and also the requisite Forms, which may readily be filled up, according to the offence complained of, will be found under the respective Titles,—Information ; Summons ; Conviction.

For the appointment of Guagers throughout the Province, except in Halifax, see Title,—Town Officers.

GUNS FIRING.

By the 32 G. 2, c. 25. 1 V. 37, If any person of what age, or degree soever, shall unnecessarily fire out of any gun, fusee, musket, pistol, or other fire-arm, in any of the houses, streets, lanes, wharves, yards, or gardens, in the town or suburbs of Halifax, such person, upon conviction thereof, upon the oath of one or more credible witness, before any one Justice of the Peace, shall forfeit the sum of ten shillings, to be levied by warrant of distress from such Justice, on the offender's goods and chattels, and for want of goods or chattels, such offender shall be committed to gaol for the space of twenty-four hours. Provided, that no prosecution for breach of this Act shall be admitted, unless complaint be made thereof within twelve hours at least after the offence committed. All forfeitures arising by virtue of this Act, shall be, one half to him or her who will prosecute for the same, and the other to the use of this His Majesty's government.

By the 48 G. 3, c. 21. 2 V. 22, The foregoing Act, and every matter and thing therein contained, are extended to the several towns, and suburbs of the several towns throughout the Province. *Perpetual.*

By the 9 and 10 G. 3, c. 3. 1 V. 156, If any child under fourteen years of age, shall fire out of any gun, fusee, or pistol ; or if any person, of what age or degree soever, shall unnecessarily fire out of any gun, fusee, or pistol, or other fire-arm, within one hundred yards of any person, either on horseback, or in any carriage within the peninsula of Halifax ; such child or person, their parents, guardians or masters, shall forfeit the like sum as is inflicted by the foregoing Act of 32 G. 2, c. 25, and to be recovered, levied and applied in like manner as is therein provided. *Perpetual.*

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Directions as to prosecutions before a Justice under either of the foregoing Acts, with the requisite Forms, which can readily be filled up so as to serve, will be found under the respective Titles,—Information ; Summons ; Conviction ; Distress ; Commitment.

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HAWKERS, see PEDLARS.

HEALTH WARDENS, see CONTAGIOUS DISEASES.

HERRINGS SMOKED, see FISH, &c.

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HIDES.

By the 1 G. 3, c. 12. 1 V. 74, If any butcher or other person, shall by himself or any person employed under him, gash, cut, split, or flaw the hide of any ox, bull, steer, cow, sheep, or calf, in fleaing thereof or otherwise, whereby the same shall be impaired or damaged, and offer the same to sale, he shall forfeit twenty shillings for each offence committed by him, or any person employed under him, to be recovered before any one Justice, and to be levied by warrant of distress and sale of the offender's goods and chattels, under the hand and seal of such Justice ; and for want of distress, he shall suffer twenty days' imprisonment ; one half of said penalty shall be paid to the informer, or person suing for the same, and the other half to the poor of the place where the offence was committed. *Perpetual.*

Cutting or In-
juring Hides.

By the 8 and 9 G. 3, c. 4. 1 V. 148, No tanner, or other person, shall sell, or expose to sale, any leather, tanned, curried, or otherwise dressed, or manufactured within the Province, or imported into the same, (from any of the neighbouring colonies,) till the same has been viewed, stamped, and marked, by the officer for that purpose to be appointed, on pain of forfeiting twenty shillings for every ox, bull, steer, or cow hide, and five shillings for every calf skin, so sold or offered to be sold.

Inspecting
Hides.

Sec. 2, 3, and 4. The Surveyors of leather shall view all such hides and skins, and mark such as are sufficiently tanned, or otherwise manufactured ; and if any person shall be convicted before two Justices, of counterfeiting the stamp or mark of such Surveyor, he shall forfeit ten pounds. All

forfeitures and penalties arising by virtue of the Act, shall be, one half to the informer, and the other half to the use of the poor, and shall be recovered by complaint before any two Justices of the Peace for the county where such complaint shall arise; and shall be levied upon due conviction, by warrant of distress, and sale of the offender's goods and chattels, under the hand and seal of such Justices; and for want of sufficient distress, the offender shall suffer one month's imprisonment. *Perpetual.*

By the 19 G. 3, c. 3. 1 V. 214, The searcher and sealer of leather shall view every skin of any cattle, calves, or sheep, either in the slaughter-house, or at the tanner's, before the same shall be delivered on sale; and if he shall find the same to be gashed, cut, split, or flawed, there shall be an allowance made in the price thereof to the buyer, as shall appear to such searcher and sealer to be just and equitable; and any butcher or other person, who shall not call on such searcher to view such skins, before any such sale thereof, shall forfeit a fine of twenty shillings, for every such skin not exposed to view as aforesaid; to be recovered before any one Justice, and to be levied by warrant of distress, and sale of the offender's goods and chattels; one half thereof to the informer or person suing for the same, and the other half to the poor of the place where the offence was committed. *Perpetual.*

For directions as to prosecutions under the foregoing Statutes, with the general Forms, which may readily be filled up so as to serve, see respectively, Titles,—Information; Summons; Conviction; Distress; Commitment.

HIGHWAYS.

I. INJURING OR OBSTRUCTING HIGHWAYS.

By the 4 G. 4, c. 30. 3 V. 170, No loaded waggon or cart shall be drawn upon any of the public roads, with any one or more of the wheels thereof locked or chained, to prevent it from turning, unless there shall be placed under such wheel or wheels, an iron shoe, not less than five inches in width, and sixteen inches in length, or a wooden shoe of the same length, and eight inches wide, connected with a chain to some part of such waggon, or cart, in such way that such wheel or wheels shall be borne up, and drawn upon said shoe. Every person who shall drive any waggon, or cart, on any of the said

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By the 7. G. 4, c. 2, § 22. 3 V. 234. if any person shall alter any public road, or private road, the same having been laid out and established by law ; or shall make any encroachment thereon, not being lawfully authorized so to do. such offender shall forfeit and pay the sum of five pounds. [By Sec. 31, this fine is to be sued for, by bill, or information, in some Court of Record.]

Sec. 23. Any one Justice shall and may on his own view, or upon the oath of one credible witness, impose a fine not exceeding twenty shillings, on any person who shall encumber any of the highways, roads, streets, or bridges, by laying timber, wood, carts, trucks, rubbish, or any other thing thereon, to be recovered by warrant of distress, and sale of the offender's goods and chattels ; or in case such offender shall not be known, or found, the same shall be recovered, by sale of so much of the timber or wood, and the carts, or other thing encumbering such road or street, and be paid to the Overseers of the poor, for the use of the poor of the town or place where, or nearest the place where the offence was committed, rendering the overplus, if any be, to the owner when discovered ; and if the nuisance shall continue, the same shall be deemed a new offence, and shall be prosecuted and liable to the penalty aforesaid.

Sec. 24. The General Sessions shall make such rules Side Paths.
and regulations as may be deemed necessary, to prevent the side paths or ways along any public road, or street, from being injured, or destroyed ; and every person offending against the same, upon conviction thereof before any one Justice, shall forfeit a sum not exceeding forty shillings, nor less than five shillings, to be levied by warrant of distress and sale of the offender's goods and chattels, and to be applied towards the repairs of such side paths or ways.

Sec. 27. If any person shall trail on any roads or high- Trailing Tim-
ways, when the same are bare of snow, or the frost on the ber.
ground insufficient to support the cattle travelling thereon, any

Cutting down
Trees, &c.

logs, timber, or other lumber, he shall forfeit and pay a fine not exceeding twenty shillings, nor less than five shillings ; to be recovered before any one Justice for the county or district wherein the offence was committed, who may impose the same on his own view, or on the oath of a credible witness ; to be levied by warrant from off the goods and chattels of the offender.

Sec. 32. Every person who shall cut down, or otherwise destroy, any trees or underwood, growing or being upon the land lying between any river, lake, or arm of the sea, and any public road, made or to be made, within thirty feet from the margin or shore of such river, lake, or arm of the sea, shall, on proof thereof by the oath of one credible witness, before any one Justice for the county wherein the offence was committed, forfeit and pay a sum not exceeding forty shillings ; to be levied in the same manner as fines for the non-performance of highway labour ; and to be applied, one half to the informer, and the other half to some one of the Surveyors of highways, for the improvement thereof. *Perpetual.*

By the 7 G. 4, c. 3. 3 V. 241, by which Commissioners of Highways are to be appointed for the towns of Halifax, Annapolis Royal, Windsor, Liverpool, Lunenburg, and Pictou, It is enacted,—“ that every person within each of the said towns, shall be obliged to keep the gutters and streets before the houses, building, or land occupied by him, or her, free from dirt and nuisances of every kind ; and that whenever any earth, ashes, manure, stones, bricks, shavings, chips, dirt, filth, offal, or any other thing, shall be found lying, thrown, or placed in any of the streets, lanes, or highways of any of the said towns, the person or persons before, or nearest whose house, building, or land, the same shall be, shall forfeit and pay a fine of twenty shillings, together with the expense incurred by the said Commissioners in removing the same ; and such Commissioners, or one of them, are authorised to cause the same to be instantly removed, without giving any notice to the owner, or supposed owner thereof, or being at all answerable for the same. Provided, that no person shall be liable to the said penalty, unless he shall have thrown or placed the said nuisance in the street, lane, or highway, where the same shall be found, or not having placed the same there, shall suffer the same to continue for twenty-four hours. And provided also, that any person, by leave of such Commissioner, may place in any such street, lanes, or highways, stones, bricks, timber, or other materials for building houses, or other work ; and may set up posts, bars, or enclosures, for the better securing such materials, and continue the same, for such time only as the Commissioners, or the major part of them may give leave, and in

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manner and form as they shall in writing direct, and no longer, on pain of forfeiture thereof."

Sec. 22. No person shall be at liberty to dig up, or break open the soil of any street or highway within the jurisdiction of the said Commissioners, respectively, without first applying to them, and obtaining their permission in writing, specifying the purpose for which such breaking of the soil is required; and the said Commissioners may impose such terms upon the person applying, as the security of passengers, by day or night, shall appear to them to require; and any person acting contrary thereto, or to the terms imposed by the said Commissioners, shall forfeit and pay five pounds for every offence.

Breaking Soil
in Streets, &c.

Sec. 23. Every person who shall drive any cart, truck, or carriage, or ride with a horse upon, or over any side path, or way, made along any public street, or highway, within the respective towns and places in this Act mentioned; or who shall roll heavy articles of any description over, or place the same thereupon, to the injury or obstruction of such side paths, or ways, shall for every such offence forfeit and pay a fine not exceeding forty shillings, nor less than five shillings; to be recovered with costs, in the manner, and to be applied as directed by the Act.

By Sec. 4 and 5, It is provided, that the said Commissioners shall prosecute for the recovery of all fines and sums of money due under the Act, and for offences against the same; and that they shall have the like process and remedy for the penalty, or sum sought to be recovered, as if the amount thereof were a private debt contracted with them respectively; and such suit shall be heard and determined in the Courts, or before the Justices possessing jurisdiction over suits, for debts to the like amount. *Perpetual.*

Prosecutions
for Fines, &c.

All the regulations and provisions of the foregoing Act, are extended to the following towns and places. To Bridge-town, in the county of Annapolis, by 8 G. 4, c. 28. 4 V. 15. To Dartmouth, by 9 G. 4, c. 27. 4 V. 40. To Digby, by 10 G. 4, c. 24. 4 V. 49. To Dorchester, by 10 G. 4, c. 47. 4 V. 71. To Falmouth, by 2 W. 4, c. 36. 4 V. 160. To Chester, by 3 W. 4, c. 6. 4 V. 195. To Guysborough, by 3 W. 4, c. 34. 4 V. 212. To North Sydney, by 4 W. 4, c. 64. 4 V. 337. To New Glasgow, by 4 W. 4, c. 72. 4 V. 349. *Perpetual.*

By the 8 G. 4, c. 23. 4 V. 10, The General Sessions in the several counties and districts, are authorised to direct such and so many gates and bars as they may think fit, to be placed and kept upon private and particular ways, heretofore,

Gates & Bars.

or hereafter to be laid out ; and to make such regulations respecting the placing and keeping such gates and bars upon such ways, as they, for that purpose, may think expedient and proper to appoint. And by 10 G. 4, c. 45. 4 V. 70, Every person who, on the oath of one credible witness, or more, shall be convicted before any one or more Justices of the Peace, of a breach of any of the said regulations made by the Sessions under the foregoing Act, shall forfeit and pay a fine, of not less than five shillings, nor more than forty shillings for every such offence, to be applied for the benefit of the poor of the township or place wherein such offence was committed. *Perpetual.*

Directions.

With regard to such of the foregoing Statutes as direct, that the penalties thereby imposed, shall on conviction of the offender, be levied by warrant of distress, the requisite directions as to the proceedings for the recovery of such penalties, with general Forms, which may readily be filled up so as to serve, will be found under the respective Titles,—Information ; Summons ; Conviction ; Distress ; Commitment. It will be observed, that by the foregoing Acts, under which Commissioners of Streets are appointed, the fines are to be recovered in the same manner, and by the same proceedings as private debts. The requisite directions, therefore, and the Forms in such suits, will be found under the Title,—Summary Trials.

II. LABOUR ON THE HIGHWAYS.

By the 7 G. 4, c. 2, § 2. 3 V. 231, Every person keeping any cart, team, or truck, shall send on every day appointed by the Surveyor of highways, one cart, or team, or truck, with two oxen, or two horses, or with one horse, in case he owns no more, and one able man to drive the same, four days in every year, to work on the roads, allowing eight hours to each day's work ; and on neglect of such duty, he shall forfeit for each day, if owning two or more oxen, or horses, ten shillings, and if owning one horse only, seven shillings ; and every other person, able of body, between the ages of sixteen and sixty, not being a military person, or holding a commission in the military or civil department of the army, or an hired servant, minor, apprentice, journeyman, or day labourer, shall, either by himself, or other sufficient person to be hired by him, and provided with such necessary implements as shall be directed by the Surveyor, work on the roads for six days in every year ; and every hired servant, minor, appren-

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ice, journeyman, and day labourer, shall, either by himself, or other sufficient person, and provided with necessary implements, work on the roads for two days ; and every householder, hired servant, minor, apprentice, journeyman, day labourer, and other person not attending, or neglecting to perform the said labour, shall forfeit three shillings for every day's neglect.

Sec. 4. When any Surveyor shall judge the labour of men more useful and necessary than that of carts, teams, or trucks, the persons who by this Act are to furnish the same, shall be, and are required, under the like penalty as aforesaid, to send instead thereof, two labouring men, furnished with necessary implements as aforesaid.

Sec. 5—6. Constables shall make out and deliver to the Surveyors, lists of all owners of carts, teams, and trucks, and of all other persons liable to perform labour on the roads, and shall also, when required by the Surveyors, summon the persons contained in the said lists, to meet to perform such labour, on such days, and at such places as the Surveyors shall direct. The Surveyors, shall, at the most seasonable time, between the first day of April, and the first day of November, (seed time and harvest only excepted,) cause the persons contained in their lists to be summoned, giving them at least six days' notice of the time and place where they are to be employed ; and shall there oversee them in labouring the whole time required ; and such Surveyors shall be excused from any other service on the roads.

Calling out
Persons to
Work.

Sec. 7. Any two Justices shall, in their discretion, lessen the number of days' labour to be performed by any poor person, who cannot, without detriment to his family, perform the labour required by the Act.

Reducing La-
bour.

Sec. 8. Persons over sixty years, keeping carts, teams, or trucks, shall when summoned so to do, send the same for four days, to assist in repairing the roads.

Persons above
Sixty Years.

Sec. 9. No Surveyor, with the consent of the owner of the land, shall alter any road, or make any repairs to a road, without the advice and consent of at least two Justices of the Peace.

Altering
Roads

Sec. 10, 11. Surveyor shall order and direct the inhabitants, as often as they shall deem necessary during the winter, to work on the roads with their horses, oxen, and sleds, in order that the roads may be rendered passable. Provided, that no inhabitant shall be compelled to furnish more than one day's labour of himself or cattle, for any one fall of snow, or where the fall or drift of snow shall not exceed the depth of twelve inches. Every inhabitant refusing or neglecting to obey such order of the Surveyor, shall forfeit ten shillings for each neglect.

Labour in
Winter.

Islands.

Sec. 28, 29. Persons living on islands, shall not be liable to perform labour on the roads on the mainland, but shall perform the same on the roads on such islands; and where such islands are connected with the mainland by any bridges or causeways, such persons shall perform their labour in rebuilding or repairing the same.

Recovery of Fines.

Sec. 30. All fines and forfeitures directed to be paid for neglect of performing labour on the roads, and of furnishing carts, teams, and trucks, as required by this Act, shall be sued for, and recovered, with costs of suit, by the Surveyors of highways, before one or more Justices of the Peace, in like manner as debts are sued for, and recovered; and shall be applied to the repairs of the said roads and bridges. *Perpetual.*

By the 8 G. 4. c. 23. 4 V. 10, The General Sessions may grant permission to any persons, to perform their labour on such roads as the said Sessions may appoint; and the due performance thereof, in pursuance of such permission, shall be considered a sufficient performance of the labour required under the foregoing Act; Provided, that within one month after the labour has been so completed, such persons shall obtain from the Surveyor for the district in which such persons reside, a certificate of the due performance of such labour, which certificate, (if the labour has been performed,) the Surveyor shall grant; and the same shall be a bar to any action against such persons under the foregoing Act. *Perpetual.*

NOTE. The several Statutes already in part recited, for the appointment of Commissioners of streets in the towns therein named, contain precisely the same regulations for the performance of labour on the streets and roads in such towns, as are contained in the before recited, second, fourth, fifth, sixth, eighth, tenth, and eleventh sections of the foregoing general Act, and therefore it is considered not necessary, here to recite the said regulations contained in those special Acts, but reference may be had to the aforesaid sections, with regard to the services, duties and liabilities of persons bound to perform such labour within the said towns.

Directions.

As doubts and difficulties have occasionally arisen, on certain points under the foregoing general Act, it may be well here, briefly to afford some information concerning them. And in the first place, as to the ownership of property, with reference to the performance of such labour, it may be remarked, that except as to the ownership of teams, carts, and trucks, the duty enjoined of repairing the roads, is one of a personal description, and not in the nature of a charge on property, either real or personal; and for this reason, an indivi-

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not be liable to perform two days labour, but coming under one of the exceptions mentioned in the Act, may only be liable to perform two days labour, while a person not owning property of any kind, may be bound to work for six days. Again, with regard to liability to labour, as the Act speaks of *persons able of body*, it follows of course, that if any individual is so maimed, decrepit, sick, or otherwise infirm, as not to be able to perform an ordinary day's labour, he is not to be considered liable to work on the roads. With reference to the persons named as only liable to work for two days, it may be mentioned, that *hired servants*, comprehend all persons either on sea or land, serving under agreement or contract of hire, by the year, month, or even week,—a *minor*, means a person between sixteen and twenty-one years of age,—an *apprentice*, means, one serving under any articles or indentures of apprenticeship, whether to learn a trade or otherwise,—by a *journeyman*, is to be understood, a person working under or for another, at any art, or trade,—and by a *day labourer*, is meant, a person who altogether, or chiefly, labours, under daily hiring and wages.

It will be observed, that by the last mentioned Act, all fines for the non-performance of labour on the roads, are to be sued for, before Justices, in the same manner as debts. In all such suits therefore, the course of proceedings, rules of evidence, costs, and other material points, will be the same, and must in like manner be adhered to, as in the case of actions before Justices for the recovery of small debts; for all which, see Title,—Summary Trials.

III. EXPENDITURE OF PUBLIC MONEY FOR REPAIR OF ROADS AND BRIDGES.

By the 7 W. 4, c. 46, § 3, Sess. 1837, If any two Justices of the Peace for the county wherein road money has been expended by contract or otherwise, shall certify to the Lieutenant Governor or Commander-in-chief for the time being, that the work upon any road or bridge hath not been faithfully performed, or that any contract or contracts have not been faithfully and honestly executed, then it shall not be lawful for the Commissioner who has directed the expenditure of the same, to draw the remaining two-thirds of the money entrusted to him to expend; but the Court of General Sessions for the said county shall, in such way and manner as shall appear to be most convenient, enquire into the expenditure of such road money, the performance of the labour, and the execution of the said contract, notwithstanding the same may have been

performed to the satisfaction of the Commissioner ; and the said Court of Sessions shall, and they are hereby authorised to certify to the Lieutenant Governor or Commander-in-chief, the particulars of such expenditure, and also the sum which in the opinion of the said Court ought to be paid to the said Commissioner ; for which sum only a warrant shall be granted on the Treasury.

Sec. 5. It shall not be necessary hereafter for Commissioners to procure any certificate or certificates of the performance of highway labour, in order to entitle them to obtain monies granted for the road and bridge service. *Duration not limited.*

Summons for Fines for neglecting to work on the Highways.

County of } To A. C., one of the Constables of the
} township of — in the said county, Greeting :

[Seal.]

You are hereby required to summon A. O., of the said township of — in the said county, yeoman, to appear before me, A. M., Esquire, one of His Majesty's Justices of the Peace for the said county, on the — day of this present month of —, at eleven o'clock in the forenoon, at — in —, to answer to the suit of A. S., Surveyor of Highways of the said township, for the district from — to —, to recover from the said A. O. the sum of —, for the refusal and neglect of the said A. O. to perform labour on the highways under the said A. S. as such Surveyor, within the limits aforesaid, in the said township, in the year —, pursuant to the Statute in such case provided ; and make return hereof on or before said day. Witness my hand and seal at — aforesaid, this — day of —, in the year of our Lord —.

A. M., J. P.

Execution thereon.

County of } To A. C., one of the Constables of the
} township of — in the said county,—Greeting :

[Seal.]

WHEREAS judgment hath been awarded against A. O., of the said township of —, yeoman, at the suit of A. S., one of the Surveyors of highways in and for the said township, for the sum of —, and — more for costs, for the neglect of the said A. O. to perform labour on the said highways, in the year of our Lord —, as by law required : These are to command and require you, to levy from off the goods and chattels

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of the said A. O., the said sums, making together —, by sale of the said goods and chattels; and for want thereof, you are hereby commanded to take the body of the said A. O., and him to commit to His Majesty's gaol in —, there to remain until he pay the sum above mentioned, with your fees, or that he be discharged by the said A. S., or otherwise by order of law. Hereof fail not, and make return of this writ to me within twenty days. Witness my hand and seal, at —, the — day of —, in the year of our Lord —.

A. M., J. P.

HOMICIDE.

I. JUSTIFIABLE HOMICIDE.

To make homicide justifiable, it must be owing to some unavoidable necessity to which the person who kills another must be reduced, without any manner of fault in himself. And there must be no malice coloured under pretence of necessity. If rioters, or forcible enterers or detainers, stand in opposition to the Justice's lawful warrant, and any of them be slain, it is no felony. So if they stand in opposition to the Sheriff's *posse comitatus*. And if the Sheriff or Magistrate, or any one coming in aid of them, be killed, it is murder in all. If a man come to burn my house, and I shoot out of my house, or issue out of my house and kill him, it is no felony. 2 *Burn's*, 783.

II. HOMICIDE BY MISADVENTURE.

THIS kind of killing is, where a man is doing a lawful act, without intent to hurt another, and death casually ensues. As where a labourer being at work with a hatchet, the head flies off and kills one who stands by. Or, where a third person whips a horse on which a man is riding, whereupon he springs out and runs over a child and kills him, in which case, the rider is guilty of homicide by misadventure, and he who gave the blow, of manslaughter. But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide, and not by misadventure; and if he ride so, in a press of people, with intent to do hurt, and the horse kills another, it is murder in the rider. It is not sufficient that the act upon which death ensues, be lawful and innocent in itself, it must be done in a proper manner, and with due caution, to prevent mischief. For instance: A

person driving a carriage, happens to kill another: if he saw, or had timely notice of the mischief likely to ensue, and yet wilfully drove on, it will be murder. If he might have seen the danger, but did not look before him, it will be manslaughter, for want of due circumspection. But if the accident happened in such a manner, that no want of due care could be imputed to the driver, it will be accidental death, and he will be excused.

A person who has killed another by misadventure, is not bailable by Justices of the Peace, but must be committed; but if he be taken only on a slight suspicion, the Justices of the Peace may bail him. 2 *Burn's*, 785—789.

III. HOMICIDE BY SELF-DEFENCE.

HOMICIDE in a man's own defence, seems to be,—where one who hath no other possible means of preserving his life, from one who combats with him on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. An officer who kills one that resists him in the execution of his office, and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all. 2 *Burn's*, 769.

IV. MANSLAUGHTER.

MANSLAUGHTER is the unlawful killing of another, without malice either express or implied; which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act. There is no difference between murder and manslaughter, but that murder is upon malice forethought, and manslaughter upon a sudden occasion. As if two meet together, and striving for the wall, the one kill the other, this is manslaughter and felony. And so it is, if they had, upon that sudden occasion, gone into the field and fought, and the one had killed the other; this had been but manslaughter, and no murder, because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given. This offence is not bailable by Justices of the Peace. 2 *Burn's*, 790.

V. MURDER.

MURDER, is when a man of sound memory, and of the age of discretion, unlawfully kills any person, under the King's peace, with malice forethought, either expressed by the

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party, or implied by law ; so that the party wounded or hurt, die of the wound, or hurt, within a year and a day. When an officer is killed in the execution of his office, it is murder, and the law implies malice. Wherever a person in cool blood, by way of revenge, beats another in such a manner that he afterwards dies thereof, he is guilty of murder ; however unwilling he might have been to have gone so far. If a master by premeditated negligence, or harsh usage, cause the death of his apprentice, it will be murder. It seems to be agreed, that no breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious it may be, and aggravated with the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person, who offends him, in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault ; whether the person slain did at all fight in his defence or not. The law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not. And it is holden, that the seconds of the party slain are likewise guilty as accessaries. They that are present when any man is slain, and do not their best endeavour to apprehend the murderer, or manslayer, shall be fined and imprisoned. 2 Burn's, 791 to 795.

By the 32 G. 2, c. 13, 1 V. 15, if any person with malice prepense, shall kill, or procure any other persons to kill, or shall on purpose and of malice forethought, and by lying in wait, unlawfully cut out, or disable the tongue, put out an eye, slit the nose, cut off a nose, or lip, or cut off or disable any limb, or member of any person, with intention to kill, or to maim, or disfigure any such person, the persons so offending, their counsellors, aiders and abettors, privy to the offence, shall be felons without benefit of clergy. And every person who shall stab or thrust any person, that hath not then any weapon drawn, or that hath not then first stricken the party who shall so stab, or thrust, so as the persons so stabbed or thrust shall thereof die, within the space of six months, although it cannot be proved that the same was done of malice forethought, yet the party so offending, and being thereof convicted, shall be excluded from the benefit of clergy. Provided, that this Act shall not extend to any person, who shall kill any person in his own defence, or by misfortune, or in any other manner than as aforesaid, nor shall extend to any persons, who in keeping the peace, shall chance to commit

manslaughter, so as the said manslaughter be not committed willingly, and of purpose, under pretext and colour of keeping the peace ; nor shall extend to any person, who in chastising or correcting his child, or servant, shall, besides his purpose, chance to commit manslaughter. *Perpetual.*

For directions as to the course of proceedings on an information and arrest for felonious homicide, and on the examination of such charge, with the Forms requisite, see respectively, Titles,—Information ; Warrant ; Arrest ; Examination ; Recognizance ; Commitment.

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HORSES, see CATTLE.

HOUSE OF CORRECTION, see BRIDEWELL,—
and VAGRANTS, &c.

HOUSE BURNING, see BURNING.

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HUE AND CRY.

THIS is the old common law process after felons, and such as have dangerously wounded any person : and it has received great countenance and authority by several Acts of Parliament. When any felony is committed, or any person is grievously and dangerously wounded, or any person assaulted, and offered to be robbed, either in the day or night, the party grieved, or any other, may resort to the constable of the bill ; and, 1. Give him such reasonable assurance thereof, as the nature of the case will bear. 2. If he know the name of him that did it, he must tell the constable the same. 3. If he know it not, but can describe him, he must describe his person, or his habit, or his horse, or such circumstances as he knows, which may conduce to his discovery. 4. If the thing be done in the night, so that he knows none of these circumstances, he must mention the number of the persons, or the way they took. 5. If none of all these can be discovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the constable with the fact, and desire him to search in his town for suspected persons, and to make hue and cry after such as may be probably suspected, as being persons vagrant in the same night.

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For levying hue and cry, although it is a good course to have the warrant of a Justice of the Peace, when time will permit, yet it is by no means necessary, nor is it always convenient, for the felon may escape before the warrant be obtained. The duty of the constable is, to raise the power of the town, as well in the night, as in the day, for the prosecution of the offender. And he may search suspected houses, or places, but his entry must be by the doors being open; for he cannot break open doors barely to search, unless the person against whom the hue and cry is levied, be there; and then it is true he may; therefore, in case of such a search, the breaking open the door is at his peril, namely—justifiable if he be there, not justifiable if he be not there. But it must be always remembered, that in case of breaking open a door, there must be first a notice given to them within of his business, and a demand of entrance and a refusal, before the doors can be broken. The constable of the town where the felony was done, as also every officer to whom the hue and cry shall afterwards come, ought to send to every other town round about him, and not to one next town only. And in such cases, it is needful to give notice in writing, (to the pursuers,) of the things stolen, and of the colour and marks thereof, as also to describe the person of the felon, his apparel, horse, and the like, and which way he is gone, if it may be. 2 *Burn's*, 812.

HYDROPHOBIA, see DOGS, &c.

IDLE AND DISORDERLY PERSONS,
see VAGRANTS.

INCEST.

By the 32 G. 2, c. 17. 1 V. 25, Every man and woman who shall carnally know each other, being within the degrees of kindred forbidden in the English Act made in the thirty-second year of King Henry the Eighth, concerning pre-contracts, and touching degrees of consanguinity, and shall be convicted thereof, before the Supreme Court, or Court of General Quarter Sessions of the Peace, shall be set in the pillory for one hour, and further shall forfeit the sum of fifty pounds, to the use of His Majesty's government, or suffer six months' imprisonment. *Perpetual*.

INDIANS.

By the 10 G. 4, c. 29. 4 V. 53, The General Sessions in the several counties and districts, shall make such rules and regulations as they may deem expedient, to prevent any person from selling, or giving in barter or exchange, spirituous liquors to Indians; and the said rules and regulations, from time to time to change and alter, and to impose such fines, penalties, and forfeitures, for the breach thereof, or of any of them, as to the said Justices shall seem fit and proper. Provided always, that any such fine, penalty, or forfeiture, do not exceed twenty shillings for each and every offence.

Sec. 2. All fines and forfeitures imposed by the said rules and regulations, for any breach thereof, shall be sued for and recovered, before any one Justice, in the same manner as debts under three pounds are now recoverable; and shall be applied, one half thereof to the person who shall sue for the same, and the other half to the relief of the poor Indians in the town or place wherein such offence shall be committed.

Sec. 3. The General Sessions, on complaint made to them, may, in their discretion, deprive any person convicted of a breach of the said rules and regulations, of his or her licence to sell spirituous liquors.

Sec. 4. It shall be lawful for any two Justices of the Peace, to provide for the instruction in reading and writing, of any Indian or Indians who may require it, and for that purpose to direct an order to any master or teacher of any public school in the Province, who may be in the receipt of any salary or allowance under any Act or Acts of this Province for supporting and establishing schools, thereby directing such master or teacher to receive into his school, any Indian, male or female, and without fee or reward to instruct and teach such Indian to read and write; and any master or teacher who shall refuse or neglect to obey any such order, shall be deprived of any provincial allowance or salary to which he may be entitled for that year. *Perpetual.*

It being provided by the foregoing Act, that the fines therein mentioned are to be recovered before one Justice, in the same manner as debts of the like amount, the proceedings and the Forms in prosecutions for the recovery of such fines, will be the same as in the case of such debts, and will be found under the Title,—Summary Trials.

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INDICTMENT.

ALL offences of a *public* nature, that is, such acts or attempts as tend to the prejudice of the community in general, are indictable. And therefore, not only all actual breaches of the peace, as Riots, Affrays, Assaults, &c., but also every criminal irregularity that tends to disturb the good order of government, or to endanger or annoy the tranquillity, welfare, or convenience of the public, is punishable by indictment. The following, therefore, are indictable misdemeanors, viz :

1. All open offences against God and religion, or against public decency, that tend to corrupt the morals of the people. Of this sort, are blasphemous books, or any profane or obscene publications, bawdy houses, &c.

2. All crimes that are *mala in se*, and of evil example.

3. All practices that tend to endanger the Constitution, as bribery at elections, seditious pamphlets, &c.

4. All contempts of the King, or his Courts.

5. All attempts to corrupt, mislead, or pervert public justice, or to make it a handle of fraud or oppression.

6. All acts and designs against the common occasions, necessities, and general commerce of the public. Such as, unlawful combinations, monopolies, forestalling, engrossing, and regrating, adulteration of victuals, and all public cheats, &c. &c. In this class are also included, the several kinds of common nuisances, both positive and negative, namely, either positive acts that annoy the public, or the neglect of some duty which the public have a right to require from the defendant, and by the omission of which a general inconvenience arises. It is an indictable offence, to incite and solicit a servant, to steal his master's goods, though the servant do not steal the goods, and no other act be done, except the soliciting and inciting. And such offence is indictable at the Quarter Sessions, as falling in with that class of offences, which being violations of the law of the land, have a tendency, as it is said, to a breach of the peace, and are therefore cognizable by that jurisdiction. It seems to be a good general ground, that wherever a Statute prohibits a matter of *public* grievance to the liberties and security of a subject, or commands a matter of public convenience, an offender against such Statute is punishable, not only at the suit of the party grieved, but also by way of indictment for his contempt of the Statute ; unless such method of proceeding do manifestly appear to be excluded by it. But if a Statute extends only to *private* persons, or if it extend to all persons in general, but chiefly concerns disputes of a private nature, it is

said that offences against such Statutes will hardly bear an indictment. It has been held that every unauthorised obstruction of a highway, to the annoyance of the King's subjects, is an indictable offence. This was held by Lord Ellenborough, C. J. in a case where it was determined to be an indictable offence, for stage coaches to stand plying for passengers in the public streets. Disobeying an order of Sessions, or an order of Justices, is an indictable offence at common law. 3 Burn's, 22, 25.

Where a Statute makes a new offence, by prohibiting and making unlawful, any thing that was lawful before, and appoints a particular method of proceeding, without mentioning an indictment, it seems to be settled at this day, that no indictment can be maintained. But upon this the true rule of *distinction* seems to be, that where the offence intended to be guarded against by a Statute, was punishable before the making of such Statute, prescribing a particular method of punishing it, there such particular remedy is cumulative, and does *not* take away the former remedy. But where the Statute only enacts, that the doing any act not punishable before, shall *for the future* be punishable in such and such a particular manner, there it is necessary that such a *particular* method by such Act prescribed, *must be specifically pursued*, and not the common law method of indictment. Wherever there is a prohibitory law, if it be still in force, the proper remedy under it, is by indictment; and where a Statute forbids the commission of any act, the doing it wilfully, is indictable, although it be done without any corrupt motive. It is also a clear and established principle, that when a new offence is created by an Act of Parliament, and a penalty is annexed to it by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty, but he may proceed on the prior clause, on the ground of its being a misdemeanor. 3 Burn's, 24, 25.

An indictment will not lie for throwing down skins into the public way, by which a personal injury is accidentally occasioned. Nor for acting, not being qualified, as a Justice of the Peace. Nor for selling, *short* measure. Nor for excluding commoners by inclosing. Nor for an attempt to defraud, if neither by false tokens nor conspiracy. Nor for secreting another. Nor for bringing a bastard child into a parish. Nor for keeping a house to receive women with child, and deliver them. 3 Burn's, 24.

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INFANTS.

I. HOW FAR ANSWERABLE FOR CRIMES.

By an infant or minor, is meant, any one who is under the age of twenty-one years. It is said generally, that those who are under a natural disability of distinguishing between good and evil, as infants under the age of *fourteen years*, which is called the age of discretion, are not punishable by any criminal prosecution whatsoever. But this must be understood with some allowance ; for if it appear by the circumstances, that an infant under that age, could distinguish between good and evil, as if one of the age of nine or ten years, kill another, and hide the body, or make excuses, or hide himself, he may be convicted and condemned, and forfeit as much as if he were of full age. In general it must be left to the discretion of the Judge, upon the circumstances of the case, how far an infant under that age is *capax doli*, or hath knowledge to discern between good and evil. Within seven years of age, there can be no guilt whatsoever, of any capital offence, the infant may be chastised by his parents or tutors, but cannot be capitally punished, because he cannot be guilty ; and if he be indicted for such an offence, as is in its nature capital, he must be acquitted. An infant may be guilty of forcible entry, in respect of personal actual violence ; and the Justices may fine him therefore. 3 *Burn's*, 55 to 57.

For any notorious breach of the peace, as a riot, battery, or the like, an infant above the age of fourteen, is equally liable to suffer as a person of the full age of twenty-one ; and if an infant judicially perjure himself, in point of age or otherwise, he shall be punished for the perjury : and he may be indicted for cheating with false dice, &c. With regard to capital crimes, the actions of infants on their attaining fourteen years of age, are subject to the same modes of construction as those of the rest of society, and therefore they are liable to capital punishments as much as if they were of full age. An Act making a new felony, extends not to an infant under the age of fourteen years ; but where a fact is made felony, or treason, it extends as well to infants above that age as to others.

II. THEIR CIVIL INCAPACITIES.

THERE seems to be no precise age fixed, at which infants are excluded from being witnesses ; and their admissibility depends upon the sense and reason they entertain of the

danger and impiety of falsehood, which is to be collected from their answers to questions propounded by the Court. It has been agreed by all the Judges, that children of any age may be examined on oath, if capable of distinguishing between good and evil; but they cannot be examined in any case without oath. This is now the established rule in all cases, criminal as well as civil, and whether the prisoner is tried for a capital offence, or for one of an inferior nature. If a child is too young to be sworn, it follows as a necessary consequence, that any account which it may have given to others, ought not to be admitted. An infant before twenty-one years of age, shall not be sworn on an inquest. A male is of age at twelve years to take the oath of allegiance. At twenty-one, and not before, persons may bind themselves by any deed, and alien lands, goods, and chattels. Upon which ground, infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their sureties only. But an infant may bind himself to pay for his necessary meat, drink, apparel, physic, and such like; and also for his good teaching and instruction, whereby he may profit himself afterwards; but if he bind himself in an obligation, or other writing, with a penalty for the payment of any of these, that obligation shall not bind him. Neither will assumpsit lie against an infant, on an account stated, for an infant is not competent to state an account. And it is said, that an infant may buy necessities, but cannot borrow money to buy; for he may misapply the money, and therefore the law will not trust him, but at the peril of the lender, who must lay it out for him, or see it laid out. And it shall be only for necessities, and not for matters of luxury, or extravagance, and if after he comes of age, he is prevailed on by surprise or other undue means, to give security, yet a Court of equity, on consideration of circumstances will relieve. 3 *Burn's* 57.

III. THEIR CIVIL CAPACITIES.

AN infant, without consent of any other, hath capacity to purchase real estate, for it is intended for his benefit; and at his full age he may either agree thereunto, and perfect it, or without any cause to be alleged, waive, or disagree to the purchase; and so may his heirs after him, if he agree not thereunto after his full age. A person is of age to be executor at seventeen. An infant cannot release a debt. An infant cannot answer but by guardian, but he may sue either by his next friend or by guardian. 3 *Burn's*, 59.

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INFORMATION.

THIS Title will treat of the proceedings on informations given before Justices, upon the great variety of Statutes imposing penalties to be recovered, or directing offences to be otherwise punished, or to be enquired into before one Justice or more. In all instances where a Statute directs that the information shall be in writing or on oath, the course prescribed must be observed, and in every case it will be safest and most proper, to take the information in writing, signed by the party complaining; but unless an oath is expressly required, that solemnity need not be observed. Where it is directed, that the information shall be before two Justices, or more, they should be together when it is taken. Upon the information being lodged in the manner requisite, the Justice or Justices should immediately issue the warrant, or summons, as the case requires, for causing the party complained of, to be brought, or to appear before them. If the information is for a felony or misdemeanor, and indeed in all cases where the charge is at the suit of the King, and also in cases between party and party, where the body of the offender is liable, a warrant to arrest, may and should be issued, but if it is merely by the party grieved, or other informer, for the recovery of a penalty, or forfeiture, or damages, a summons to appear and answer to the complaint, is the proper process. This latter should be served a reasonable time, (in general not less than three days,) before the day for appearance. On the party being brought up on a warrant, if it is a charge of felony, on which examinations are to be taken, to be sent into a Superior Court, the course to be observed by the Justice or Justices, will be found under the Title, —Examination. When the prosecution is to be heard and determined before the Justice, if at the time appointed for the hearing of the case, the party charged does not appear, after having been duly summoned, the case may be heard and evidence received on the part of the prosecution, and judgment given, as though the party were present, unless in cases where other proceedings are directed to be had, or it is otherwise provided by the Statute on which the prosecution is founded. Where the party charged appears, or is brought forward at the time appointed, but no person appears on the part of the prosecution, the information must be dismissed, and the defendant, if in custody, discharged. But where both parties are present for a trial, the Justice or Justices must in the first instance, cause the party charged to be informed of the nature of the charge against him, by

having the information read, or the substance thereof stated to him ; and he must then be required to plead to it, or say whether he is guilty, or not guilty. If he pleads guilty, no evidence as to the offence need be produced, but judgment of conviction may immediately be given, and the penalty or other punishment be awarded, and made known to the defendant. If he denies the charge, the prosecutor must be called upon to establish it by evidence. It must here be observed, that if any part of the penalty sought to be recovered, is to be received by the party informing and prosecuting ; or he is otherwise to receive any direct gain or benefit from the conviction of the defendant, he cannot be a witness in support of the charge, but it must be proved by other testimony ; but if he is not interested in any such manner, he may be admitted to give evidence. After the evidence on the part of the prosecution has been closed, the defendant may state his defence, and produce testimony on his behalf, and after all the evidence on each side has been given, the Justice, who in these prosecutions is invested with the powers of a Jury, after a consideration of all the testimony, and of the law relating to the case, must form and declare his judgment, whether of conviction or acquittal. If, as is generally the case, the Statute on which the prosecution is founded, limits a time within which such prosecution is to take place, it must appear in proof that it was commenced within such limited time after the commission of the offence. The Justices in every case, must also be careful, that the fine or other punishment they impose, is precisely such as the Statute on which the prosecution is founded, directs or warrants, for the offence of which the party is convicted, as no other or further punishment, can legally be substituted or imposed. Further, and more particular information, if needed, with regard to the forms, service and return of warrants and summons's, the examination, bailment, or commitment of prisoners, the rules of evidence, the proceedings, on summary trials before Justices, and as to convictions, writs of distress, and of execution, will be found throughout this work, under the appropriate Titles. Special forms of information, for several offences of the higher descriptions, and for some which most frequently occur, are here given ; also a general form, which may readily be filled up, so as to serve in nearly every case, care being taken to set forth therein, all the substantial averments and statements, which, by the Statute on which the prosecution is founded, are made material to constitute the offence charged.

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Information for Burning a Dwelling House.

County of } BE it Remembered, that on the — day of
 } —, in the year of our Lord one thousand eight
 hundred and —, at — in the township of —, in the
 said county, A. C. of the township of —, in the said county,
 yeoman, cometh before me, A. M. Esquire, one of His Ma-
 jesty's Justices of the Peace in and for the said county of —,
 and complaineth and maketh oath, that on the — day of —, in
 the year of our Lord one thousand eight hundred and —, his
 dwelling-house, situate at — in the township of — in the
 said county, was, as he verily believes, unlawfully, maliciously,
 and feloniously set fire to and burnt; and that he the said A.
 C. hath just cause to suspect, and doth suspect, that one A.
 O., of — in the said county, labourer, did unlawfully, ma-
 liciously, and feloniously set fire to, and burn the said dwel-
 ling-house; and thereupon the said A. C. prayeth the judgment
 of me in the premises, that my warrant may issue against the
 said A. O., to answer the premises.

Sworn and exhibited before me, the } A. C.
 day and year first above mentioned. }
 A. M., J. P. }

*Information for Uttering Counterfeit Coin: on Stat. 32 G.
 2, c. 20, Sec. 6. 1 V. 29.*

County of } THE information of A. I., of the township of
 } —, in the said county of —, labourer, taken
 upon oath before me A. M., Esquire, one of His Majesty's
 Justices of the Peace for the county aforesaid, the — day of
 —, one thousand eight hundred and —

This informant on his oath deposeth and saith, that on the
 — day of — last past, at the township of — in the said
 county, A. O. of the township of — in the county aforesaid,
 did unlawfully and deceitfully utter, and pay to him the said A.
 I., one piece of false and counterfeited money, made and
 counterfeited to the likeness and similitude of the lawful and
 current coin of the —, called a —, lawful and current in
 this Province; he the said A. O. then and there well knowing
 the said piece of money to have been false and counterfeit.
 And thereupon he the said A. I. prayeth that justice may be
 done in the premises.

A. I.

Before me,

A. M., J. P.

If the charge is for counterfeiting, diminishing, or imbas-
 ing coin, the Information must be filled up accordingly.

Common Form of Information for Felony.

County of } The information and complaint of A. I., of
 } the township of — in the county of —,
 yeoman, made on oath before me A. M., Esquire, one of His
 Majesty's Justices of the Peace for the said county of —,
 on the — day of —, in the year of our Lord one thousand
 eight hundred and —:

The said informant deposeth and saith, that yesterday in
 the night, or early in the morning of this day, [divers goods of
 him the said A. I., to wit : —, have feloniously been stolen,
 taken, and carried away from the house of him the said A. I.,
 at the township aforesaid, in the county aforesaid, and that he
 hath just cause to suspect, and doth suspect, that A. O., late
 of — in the said county, labourer, did steal, take, and carry
 away the same ;] And thereupon he the said A. I. prayeth
 that justice may be done in the premises, A. I.

Before me,

A. M., J. P.

If the offence is any other description of felony, the in-
 formation must of course be filled up according to the material
 facts of the case which constitute such offence.

*Information for immoderately driving a Carriage ; on Stat. 4,
 G. 4, c. 23. 3 V. 166.*

County of } THE information and complaint of A. I., of
 } the township of — in the said county of —,
 made before me, A. M., Esquire, one of His Majesty's Jus-
 tices of the Peace in and for the said county, on the — day of
 —, in the year of our Lord one thousand eight hundred
 and —,

Who saith, that on the — day of —, in the year afore-
 said, and within forty-eight hours of the time of exhibiting this
 information, A. O., of the township of — in the said county,
 labourer, did, at the town of — in the said county, unlaw-
 fully drive a certain — on and over a certain public road in
 the said town of —, in an immoderate, violent, and careless
 manner, and not in a moderate and careful manner, contrary
 to the form of the Statute in such case made and provided,
 whereby the said A. O. hath forfeited the sum of —, and
 hereupon the said A. I. prayeth the judgment of me the said
 Justice, and that the said A. O. may be summoned to appear
 before me, to answer the premises. A. I.

Before me,

A. M., J. P.

NOTE.

any other offence
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 every case must
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*Information for
 Regulation of*

County of }
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 yeoman, made
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 said A. I. prayeth
 that the said
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Before me,

General Form

County of

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 county, yeoman,
 date of the

NOTE. The foregoing Form will serve in the case of any other offence under the same Act, with only the difference obviously requisite in the statement of the offence, which in every case must be set forth as nearly as may be in the words of the Act.

Information for Recovery of a Penalty for a Breach of a Regulation of Sessions, made in pursuance of a Statute.

County of } **THE** information and complaint of A. I., of
 } the township of —, in the said county of —,
 yeoman, made before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, on the — day of —, in the year of our Lord one thousand eight hundred and —

Who says, that on the — day of — in the year aforesaid, at — in the county aforesaid, A. O. of — in the said county, yeoman, did unlawfully — [here state the offence according to the facts, and as nearly as may be in the words of the Regulation,] contrary to the form and effect of a certain regulation in that behalf made by His Majesty's Justices of the Peace for the said county, in General Sessions assembled in and for the said county, in and by which said regulation it is ordered, directed, and declared, that —, [here state the regulation, as nearly as may be in the exact words thereof ;] by reason of which offence the said A. O. hath forfeited and become liable to pay the sum of —. And hereupon the said A. I. prayeth the judgment of me the said Justice, and that the said A. O. may be summoned to appear before me to answer the premises.

A. I.

Before me,

A. M., J. P.

General Form of an Information before a Justice or Justices, on a penal Statute.

County of } **THE** Information and complaint of A. I., of
 } — in the said county of —, labourer, made
 before me, [or us as the case may be,] one of His Majesty's Justices of the Peace in and for the said county, on the — day of —, in the year of our Lord one thousand eight hundred and —.

The said informant saith, that A. O., of — in the said county, yeoman, heretofore, and within — next before the date of this information, to wit, on the — day of —, in the



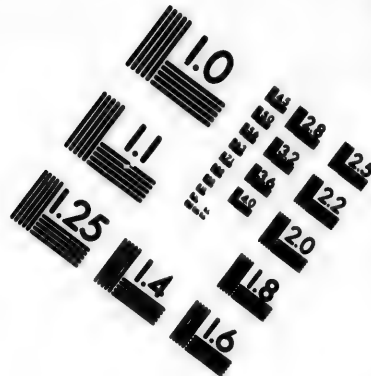
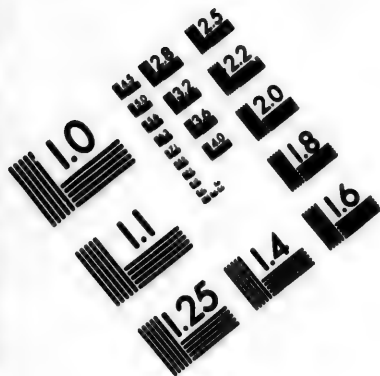
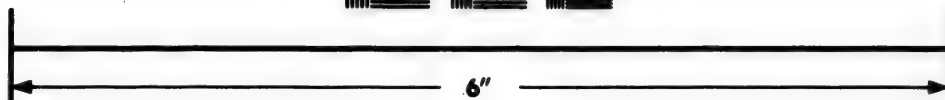
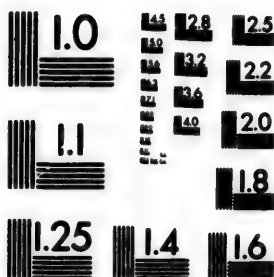


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year —, at — in the county aforesaid, did [here set forth the offence, according to the facts, and as nearly as may be in the words of the Statute declaring such offence,] contrary to the form and effect of the Statute in such case made and provided; whereby the said A. O. hath become liable to —. Whereupon, the said A. I. prayeth the judgment of me the said Justice, and that the said A. O. may be summoned to appear before me, to answer the premises.

A. I.

Taken before me,

A. M., J. P.

 INNS AND INNKEEPERS, see TAVERNS.

INSOLVENT DEBTORS.

By Stat. 2 W. 4, c. 58. 4 V. 187, It shall and may be lawful in any case where any person shall have been committed to prison, under any execution by any Justice or Justices of the Peace, in any cause tried and determined before such Justice or Justices, for any two Justices for the county wherein such person shall be imprisoned, without fee or reward, to extend the benefit of the Act passed in the third and fourth years of the reign of his late Majesty King George the third, entitled "An Act for the Relief of Insolvent Debtors," and the Acts in amendment thereof, to every such person who may have been committed to prison as aforesaid, although neither of the said Justices last mentioned may have been one of the Justices by whom the said person may have been committed. *Perpetual.*

NOTE. The Act of 3 and 4 G. 3, mentioned in the foregoing clause, is to be found in the 1st Volume of the Provincial Acts, page 90. The only Acts now in force, in amendment thereof, are the 57 G. 3, c. 1. 3 V. 1, and the before mentioned Act of 2 W. 4, c. 58. 4 V. 187. As these Acts are very voluminous, and the examinations of insolvent debtors always takes place in the county town where the several volumes of the Provincial Statutes can readily be referred to, it is deemed quite unnecessary to recite here the several provisions of the said Acts. Moreover, it is for many reasons highly desirable to bring this work within the most moderate compass, consistent with affording to Magistrates all information really needful to the right discharge of their various duties.

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By the 7 W. 4, c. 47, Sess. 1837, Whenever the person of any debtor shall have been arrested upon mesne process, it shall and may be lawful for him to apply to the Court, or Justice, or Justices from whence such process issued, for an order to bring him or her before such Court, or Justice or Justices, in order that he or she may take the benefit of the Acts passed for the relief of Insolvent Debtors ; which order it shall and may be lawful for such Court, or Justice or Justices, to make, in whatsoever stage the proceedings against such debtor may be ; Provided always, that due notice shall be given to the plaintiff, according to the provisions of the said Acts.

Debtors arrested on Mesne Process.

Sec. 2. If upon the examination of such debtor, before such Court, or Justice or Justices, he or she shall confess the debt, to the amount indorsed upon the writ, as to the amount agreed upon between the parties, it shall appear that he or she would be entitled to his or her discharge, in case judgment had been entered up against him, or her, it shall be lawful, in whatever stage the proceedings may be, for the said Court, or the said Justice or Justices, to afford to such debtor the relief extended by the said Acts, to debtors against whom judgments have been entered up ; provided always, that the creditor or creditors, if he, she, or they shall think fit, may proceed to perfect a judgment against such debtor, notwithstanding his or her discharge from arrest. *Perpetual.*

As the proceedings under this last mentioned Act may take place before the Justice at his own house, and under such circumstances that he may not have it in his power to refer to the several Statutes before mentioned, relating to insolvent debtors, it is deemed proper to set forth here certain provisions of the said Statutes, for the guidance of the Justice, with reference to such proceedings under the said Act. And first, as to the notice to the plaintiff, which the said Act requires, it is provided and enacted by the 57 G. 3, c. 1. 3 V. 2, "that the prisoner, or some person on his behalf, shall give two days' notice to the creditor or creditors, at whose suit or suits the prisoner is charged in execution, or to his or their attorney or agent, of the time and place appointed by the Court or Justices, to consider the said petition ; and if the said creditor or creditors do not reside within ten miles of the place so appointed, the prisoner shall give an additional day's notice, for every twenty miles from the place of the said meeting, to the residence of the creditor or creditors, or of his or their attorney or agent." *Perpetual.*

Notice to Creditor.

With regard to the examination of a prisoner who has applied for his discharge as an insolvent debtor, it is provided by the Statute of the 3 & 4 G. 3, c. 5. 1 V. 90, "that upon

Examination of the Debtor.

the day appointed for appearance, if the creditor refuse or neglect to appear, upon affidavit of the due service of the order of the Justices, the said Justices shall and may, in a summary way, examine into the matter of the petition of the prisoner, and hear what can or shall be alleged on either side, for or against the discharge of such prisoner, and may, and are required to administer or tender to the prisoner, an oath to the effect following :

I A. B. do solemnly swear, in the presence of Almighty God, that the account by me delivered into — in my petition to — doth contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever, which I, or any in trust for me, have, or at the time of my said petition, had, or am or was in any respect entitled to, in possession, remainder, or reversion, (except the wearing apparel and bedding for me or my family, and the tools or instruments of my trade or calling, not exceeding ten pounds in the whole,) and that I have not at any time since my imprisonment, or before, directly or indirectly, sold, leased, assigned, or otherwise disposed of, or made over in trust for myself or otherwise, other than as mentioned in such account, any part of my lands, estate, goods, stock, money, debts, or other real or personal estate, whereby to have or expect, any benefit or profit to myself, or to defraud any of my creditors to whom I am indebted. So help me God.

“ And if the prisoner shall take the said oath, and the creditors shall be satisfied with the truth thereof, the Justices may immediately order the lands, goods, or effects, contained in such account, or so much thereof as may be sufficient to satisfy the debts wherewith the prisoner is charged, and the fees due to the provost marshal, and the gaoler, to be, by endorsement on the petition signed by the prisoner, assigned to the creditors, or one or more of them, in trust for the rest ; and such trustees may take possession of, or sue for the said lands, goods, or effects ; and upon making such assignment, the said prisoner may be discharged from custody, by order of the said Justices.”

Sec. 7. Such debtor shall not be again arrested for the same debt, but the judgment shall remain in force, and execution thereon may be taken out against his lands, tenements, goods and chattels, (except his wearing apparel, bedding, and necessary tools of trade.) *Perpetual.*

By the 2 W. 4, c. 58. 4 V. 186, Where any insolvent debtor, detained in prison under execution, shall apply for his discharge, and shall comply with the directions of the Acts for the relief of insolvent debtors, he shall be forthwith discharged.

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Sec. 2. or Court, be that such debt occurred any lay of payment or Court, re detained in or Court to riods as the der all the o time, to ma or Court ma

Sec. 4. to be discharged shall be law person is b assignment tices be de tory transfe the real and said.

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from imprisonment, unless sufficient cause for his further detention shall be shewn by affidavit.

Sec. 2. Provided, that if it shall appear to the Justices, or Court, before whom any such prisoner shall be brought, that such debt was fraudulently contracted, or that there have occurred any circumstances in respect of such debt, or the delay of payment thereof, which, in the opinion of such Justices, or Court, render it proper that the person should be longer detained in prison, then it shall be lawful for the said Justices or Court to remand the prisoner for such longer period or periods as the said Justices or Court shall consider proper, under all the circumstances of the case; and also, from time to time, to make such further order or orders as the said Justices or Court may judge equitable and proper.

Sec. 4. In every case where a person shall be ordered to be discharged upon assigning any real or personal estate, it shall be lawful for the Court or Justices before whom such person is brought, to order all such deeds and instruments of assignment to be executed, as shall by the said Court or Justices be deemed necessary, for the more perfect and satisfactory transfer and assignment to the creditor or creditors, of all the real and personal property, ordered to be assigned as aforesaid.

Sec. 5. The Court or Justices before whom any such prisoner may be brought, may, and are hereby empowered, to refuse to discharge any such prisoner, if he shall decline or refuse to comply with such terms and conditions as the said Court or Justices may deem reasonable to be entered into, by or on the part of the prisoner, towards the payment in whole or in part of the debt or costs for which he may be confined. *Perpetual.*

Refusing
Discharge.

JUSTICES OF THE PEACE.

JUSTICES of the Peace, are Judges of Record, appointed by the King to be Justices within certain limits, for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers Statutes committed to their charge. And a record or memorial, made by a Justice of the Peace, of things done before him, judicially, in the execution of his office, shall be of such credit that it shall not be gainsaid. One man may affirm a thing, and another man deny it, but if a *record* once say the word, no man shall be received to aver, or speak against it. And therefore

to avoid all contention, while one saith one thing, and another saith another, the law reposes itself, wholly and solely, in the report of the Judge. And hereof it cometh, that he cannot make a substitute or deputy in his office, seeing that he may not put over the confidence that is put in him. Great cause therefore have the Justices to take heed, that they abuse not this credit, either to the oppression of the subject, by making an untrue record, or the defrauding of the King, by suppressing the record that is true and lawful. Hereof also it cometh, that if a Justice of the Peace, certify to the King's Bench, that any person hath broken the peace in his presence, upon this certificate, such person shall be there fined, without allowing him any traverse thereto. 3 *Burn's*, 108. [Such a certificate to the Supreme Court of this Province, will doubtless have the same force and effect.]

I. OF THE COMMISSION OF JUSTICES OF THE PEACE.

The Form of the Commission of Justices of the Peace in this Province, at the present day, is as follows :—

Province
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Nova Scotia. }

WILLIAM the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith; and of the United Church of England and Ireland on Earth the Supreme Head. To A. B., C. D., &c. greeting. Know ye, that We have assigned you, jointly and severally, and every one of you, our Justices to keep our peace, in our county of —, and to keep and cause to be kept, all the ordinances and Statutes for the good of the peace, and for preservation of the same; and for the quiet rule and government of our people, made in all and singular their articles, in our said county, (as well within liberties as without,) according to the force, form and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances and Statutes, or any one of them, in the aforesaid county, as it ought to be done, according to the form of those ordinances and Statutes; and to cause to come before you or any of you, all those, who to any one or more of our people, concerning their bodies, or firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept. We have also

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assigned you, and every two or more of you, (of whom any one of you the aforesaid A. B., C. D., &c. we will shall be one,) our Justices aforesaid, to enquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, enchantments, sorceries, arts, magic, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever, and of all and singular other crimes and offences, of which the Justices of our Peace may or ought lawfully to enquire, by whomsoever, and after what manner soever, in the said county done or perpetrated; or which shall happen to be there done or attempted; and also of all those who in the aforesaid county, in companies, against our peace, in disturbance of our people, with armed force, have gone or rode, or hereafter shall presume to go or ride; and also of all those who shall have there lain in wait, or hereafter shall presume to lie in wait, to maim, cut, or kill any of our people; and also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the form of the ordinances and Statutes or any one of them, therefore made for the common benefit of our Province of Nova Scotia, and our people thereof, have offended, or attempted, or hereafter shall presume in the said county to offend or attempt; and also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their office, about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly; or have been, or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever, or after what manner soever, in our aforesaid county, done or perpetrated, or which hereafter shall there happen to be done or attempted, in what manner soever; and to inspect all indictments whatsoever, so before you taken, or to be taken, or before others late our Justices of the Peace in the aforesaid county, made or taken, and not yet determined; and to make and continue processes thereupon, against all and singular the person or persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed; and to hear and determine all and singular the felonies, poisonings, enchantments, sorceries, arts, magic, assaults, batteries, breaches of the peace, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the Laws and Sta-

tutes of England, and according to the Laws and usages of our said Province of Nova Scotia, not being repugnant thereto, as in the like case it has been accustomed or ought to be done; and the same offenders, and every of them, for their offences, by fines, ransoms, amerciaments, forfeitures, and other means, as according to the law aforesaid, or form of the ordinances and Statutes aforesaid, it has been accustomed, or ought to be done, to chastise and punish.

Provided always, That if a case of difficulty upon the determination of any of the premises, before you, our said Justices of the Peace, or any two or more of you, shall happen to arise, then let judgment in no wise be given thereon, before you or any two or more of you, unless in the presence of the Chief Justice of our said Province of Nova Scotia, for the time being, or of some one of our Justices of our Supreme Court for the same Province, or of one of our Justices, appointed to hold the Assizes in the aforesaid county.

And therefore we command you, and every of you, that to keeping the peace, ordinances, Statutes, and all and singular other the premises, you diligently apply yourselves; and that at certain days and places, which you or any such two or more of you, as is aforesaid, shall appoint for these purposes, into the premises ye make enquiries; and all and singular the premises hear and determine, and perform, and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England, and according to the laws and usages of our said Province of Nova Scotia, not being repugnant thereto. Saving to us, the amerciaments, and other things to us therefrom belonging; and we command, by the tenor of these presents, our Sheriff of our said county of —, that at certain days and places, which you or any such two or more of you as is aforesaid, shall make known to him, he cause to come before you, or such two or more of you as aforesaid, so many, and such good and lawful men of our said county, (as well within liberties as without,) by whom the truth of the matter in the premises shall be the better known and inquired into; lastly, we have assigned you, the said A. B., Esquire, Keeper of the Rolls of our peace in our said county; and therefore you shall cause to be brought before you, and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid. In witness whereof, we have caused these our letters to be made patent. Witness our truly, &c. &c. at Halifax, &c.

Know ye that we have assigned you.] This is founded

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on the English Statute of the 1 Ed. 3, c. 16, by which, "for the better keeping and maintenance of the peace, the King wills, that in every county, good men and lawful, which be no maintainers of evil, or barretors in the country, shall be assigned to keep the peace." From this Act we are to date that great alteration in the English Constitution, whereby the election of conservators of the peace was taken from the people, and translated to the assignment of the King. And here we may observe, that the Commission hath two parts, or consists of two different assignments. By this first assignment, any one or more Justices have as well all the ancient power, touching the peace, which the conservators of the peace had at the common law, as also that whole authority which the Statutes have since added thereto. The second assignment defines their powers in Sessions. [See Title,—Sessions.]

Jointly and severally, and every one of you.] Whatsoever any one Justice alone may do, the same also may lawfully be done by any two or more Justices; but where the law gives authority to two, there one alone cannot execute it. And yet where a Statute appoints a thing to be done by two Justices, or more, if the offence be any misdemeanor, or matter against the peace, there, upon complaint made of the offence to any one of those Justices, it seems that one of them may grant out his warrant to attach the offender, and to bring him before the same Justice, and the other Justice so appointed, (at some convenient place,) and then they to hear and determine the same. But it seems that when a thing is appointed by any Statute to be done, by or before one person certain, such thing cannot be done by or before any other; and by such express designation of one, all others are excluded, and their proceedings therein are,—*coram non judice*.

Our Justices.] In that the King calls them *our* Justices, their authority determines of course by his death or demise. But by the 1 Anne, Stat. 1, c. 8, § 2, No patent, or grant of any office or employment, shall determine by the King's death or demise, but shall continue in force for six months after, unless in the mean time made void by the successor. Also, before his death or demise, the King may determine the Commission at his pleasure; and that either expressed, as by writ under the Great Seal, or by implication, by making a new Commission and leaving out the former Justices' names. But until notice, or publishing of the new Commission, the acts of the former Justices are good in law.

To keep our peace.] By these words, *our peace*, when the King dies, the surety of the peace is discharged, for when he is dead, it is not his peace.

In our county of —.] Here are two considerations : one is, how far a Justice can act when he is out of the county ; and the other is, when he is in the county, how far his power extends to other counties. As to the former case, when he is out of the county, it is said, that the Justices have no coercive power when out of the county ; and therefore, that an order of bastardy, or for payment of labourer's wages, made by them out of the county, is not binding. Yet it is said, that *recognizances*, and *informations* voluntarily taken before them, in any place, are good. And Lord Hale says, that a Justice of the Peace may do a ministerial act out of his county, as examining a party robbed, as to his knowledge of the felons, but that he cannot do a compulsory act, as committing a person for not giving recognizance. Justices, either of the county from which tenants fraudulently remove goods, or of that in which they are concealed, may convict the offenders in their respective counties. Unless facts are stated to make the contrary appear, the Court always presumes in favour of the acts of inferior jurisdictions. 3 *Burn's*, 115—16

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By 54 G. 3, c. 15, § 7. 2 V. 122, In case any person against whom a warrant shall be issued, by any Justice or Justices of the Peace of any county, district, or place out of the jurisdiction of the Justice or Justices granting such warrant, it shall be lawful for any Justice or Justices of the Peace, of the county, district, or place, where such person shall escape, go into, be, or reside, and such Justice or Justices is, and are, hereby required, upon proof being made upon oath of the handwriting of the Justice or Justices granting such warrant, to indorse his or their name or names on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant in such other county, district, or place, out of the jurisdiction of the Justice or Justices granting such warrant as aforesaid, and to apprehend and carry such offender or offenders before the Justice who indorsed the warrant, or some other Justice or Justices of such other county, district, or place where such warrant was indorsed ; and in case the offence shall be bailable in law, and the offender shall be ready and willing to give bail, for his appearance at the next sitting of the Supreme Court, or next General Quarter Sessions of the Peace, to be held in and for the county or district within which the offence was committed, such last mentioned Justice or Justices shall and may take bail or bail of such offender or offenders, for such appearance, in the same manner as if the Justice or Justices of the Peace of the county, district, or place where the offence was com-

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mitted might have done ; and the Justice or Justices who shall take bail as aforesaid, shall deliver the recognizance, together with the examination or confession of such offender, or offenders, and all other proceedings relative thereto, to the Constable or other person so apprehending such offender as aforesaid, who is hereby required to receive and deliver over such recognizance, examination, and other proceedings, to the Clerk of the Supreme Court, or Clerk of the Peace of the county or district where such offender or offenders is or are required to appear by virtue of such recognizance. And in case the offence for which such offender or offenders shall be so apprehended and taken, be not bailable in law, or such offender or offenders shall not give bail for his or their appearance as aforesaid, to the satisfaction of the Justice or Justices before whom he or they shall be brought as aforesaid, then, and in that case, the said Constable or other officer, shall carry and convey such offender or offenders before one of His Majesty's Justices of the Peace of the county, district, or place where such offence was committed, there to be dealt with according to law. *Perpetual.*

And to keep and cause to be kept all ordinances and Statutes for the good of the peace.] It seems certain, that by virtue hereof, they may execute all Statutes whatsoever, made for the better keeping of the peace, as well those Statutes made before the reign of Ed. 3, in whose time Justices of the Peace were first instituted, as those made since. The power, however, of Justices of the Peace in relation to those former Statutes, seems entirely to depend on the King's Commission, and yet hath always been unquestionably allowed. From whence it appears, that regularly the King, by his Commission, may authorise whom he pleases to execute an Act of Parliament. But if no power be expressly given in any such Statute, to any one Justice alone, he cannot proceed upon it, but he may prefer the cause at the Sessions, and work it to a presentment upon the Statute. But besides the Statutes relating to the peace, there are also many other Statutes, which are not specified in the Commission, and yet are committed to the charge and care of the Justices of the Peace, by the express words of such Statutes ; and all such Statutes are to them a sufficient warrant and commission of themselves, although they be not recited in the Commission, and are to be executed by them, according as the same Statutes themselves do severally prescribe and set down.

And for the quiet government of our people.] Of our people ;—yet it seems that the subjects of a foreign prince, coming into the country, and living under the protection of

our King, shall be subject to, and have the benefit of the laws in respect of the local allegiance which they owe to him.

Concerning their bodies.] If a man is in fear that another will hurt his *servants or cattle*, or other *goods*, the surety of the peace shall not be granted; but if one threatens to hurt a man's *wife*, or *child*, he may crave the peace by virtue of these words.

Have used threats.] It should seem, from the many causes which from time to time have been adjudged sufficient to bind to the good behaviour, that this expression is not to be understood of *words only*, but of threatening actions likewise; or any thing whereby a man has just cause to apprehend the burning of his houses, or some bodily hurt to be done to him.

To find sufficient security.] This is done by recognizance; by a reasonable intendment of law, more than by any especial law in that case provided.

For the peace or their good behaviour.] A Justice of the Peace is authorised to require surety of the peace for a limited period, (e. g. two years,) according to his discretion, and that he need not bind the party over to the next Sessions only.

In our prison.] The King's prison is the common gaol of the county. 3 *Burn's*, 118—121. [NOTE. But by sundry Statutes, Justices of the Peace are authorised to commit for certain offences, either to the gaol, or to the house of correction, according to their discretion.]

A Justice of the Peace has authority to issue his warrant for the arrest of a party, charged with having published a libel, and upon his neglect to find sureties to answer the charge, he may commit him to prison, there to remain till delivered by due course of law. 3 *Burn's*, 254—799. The publishers and distributors of impious and seditious libels, may be instantly taken up by a warrant of a Justice, and held to bail. 3 *Burn's*, 253—255.

We have also assigned you and every two or more of you.] Here begins the second part of the Commission, or the second assignment; all the business within which assignment belongs to the Sessions of the Peace. And by this it appears that two Justices may hold a Sessions, but that one Justice cannot.

By the oath of good and lawful men.] That is, by a Jury sworn.

Of all and all manner of Felonies.] That is, either by the common law, or by Statute. Though the Commission doth not mention *murders* and *manslaughters*, by express name, but only felonies generally, yet by these general words they have power to hear and determine murder and

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manslaughter, and also may take an indictment of *se defendendo*. But though the Justices have this power, yet they do not ordinarily proceed to hear and determine these offences, and rarely other offences without clergy. In cases of great moment, they bind over the prosecutors, and bail the party, if bailable, to the next gaol delivery; but in smaller matters, as petit larceny, and some cases within clergy, they bind over to the Sessions. But this is only a point of discretion and convenience, not because they have not jurisdiction of the crime. So, also, an inquisition of *self murder*, if the body cannot be seen, and so not enquired of by the Coroner, may be taken before Justices of the Peace, for it is a felony, and within the extent of their Commission. So, also, if a person hath committed treason, though the Justices have no cognizance of it as treason, yet they have cognizance of it as a felony, and as a breach of the peace; and therefore, a Justice of the Peace, upon information on oath, may issue his warrant to take the traitor, and may take his examination and commit him to prison.

Trespases.] This is founded on the Statute of the 34 Ed. 3, c. 1, which enacts, that the Justices assigned, shall have power to restrain the offenders, rioters, and all other barrators, and to chastise them according to their trespass or offence. And upon this Mr. Hawkins observes, that the word *trespass*, is of very general extent, and in a large sense, not only comprehends all inferior offences which are properly and directly against the peace, as assaults and batteries, and such like, but also all others which are so, only by construction, as all breaches of the law in general are said to be. Yet it hath been settled, that Justices of the Peace have no jurisdiction over forgery, or perjury at the common law, for inasmuch as the chief end of the institution of these Justices was, for the preservation of the peace against personal wrongs, and open violence, and the word *trespass* in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only, in the said Statute and Commission; or at the most to extend to such other offences only, as have a direct and immediate tendency to cause such breaches of the peace, as libels and such like, which, on this account have been adjudged indictable before Justices of the Peace. 3 Burn's, 121—3.

Forestallings, regratings, engrossings.] The operation of the Statutes of this Province against these offences is suspended at present, but they still continue offences, punishable by indictment at the common law.

Extortions.] The intent of this word is, to enquire of those who have done excessive wrongs; for wrong done by

any one is properly trespass, but excessive wrong done by any one is called extortion ; and this is more properly in officers, as sheriffs, mayors, bailiffs, escheators, and other officers whatsoever, (as well spiritual as temporal,) who by colour of their office, have done great oppression and excessive wrong to the King's subjects, in taking excessive rewards, or fees for doing their offices. The Justices have no express power given to them over this offence, by any Statute ; upon which Mr. Hawkins observes, that Justices of the Peace have jurisdiction of all inferior crimes within their Commission, whether such crimes be mentioned in any Statute concerning them, or not, for that all such crimes are either directly, or at least by consequence and judgment of law against the peace ; and upon this ground principally, he says, as he apprehended, it was lately resolved, that they may take an indictment of extortion.

And of all and singular other crimes and offences of which the Justices of our peace may or ought lawfully to enquire. Which general words seem to include the vast number of offences over which they have a jurisdiction given to them, by many Statutes, and which are not particularly mentioned in the Commission.

And also of all those who in companies, against our peace, in disturbance of our people, with armed force have gone or rode. By these words, they are to enquire of riots, routs, and all unlawful assemblies. 3 Burn's, 123.

Weights or Measures. Selling by false weights or measures, is a misdemeanor at common law, indictable before Justices of the Peace. [Also, see Title,—Weights and Measures.

And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices have unduly behaved themselves. This clause is as ancient as the 4 Ed. 3, c. 2, on which it is founded. And it hath been suffered to remain in the Commission, not as of any necessity at all, (since it is incident to every Court of Record to do correction upon whatsoever officers and ministers do serve them,) but only for the plainer declaration of the power of these Justices in that behalf, and for the more assured terrifying of such as shall, either of contempt or negligence, do that which is amiss.

And to inspect all indictments so before you taken. But they cannot proceed upon indictments taken before Coroners, or Justices of Oyer and Terminer, or gaol delivery.

Or before other our late Justices. This is founded on the Stat. 11, H. 6, c. 6, which enacts, that no indictment, plea, suit, or process, shall be discontinued by a new Commis-

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sion, but the Justices in the new Commission, after they shall have the records of the same pleas and processes before them, shall have power to continue the said pleas and processes, and to hear and finally determine the same, as the former Justices might have done.

And to make and continue processes.] This is by *venire*, *distringas*, *capias*, or *exigent*, as the case shall be. And it differs from a warrant in that a warrant is only to attach and convene the party before indictment, and may be either in the name of the King or of the Justice; but the process, issues after indictment, and must be in the name of the King only.

Until they can be taken, surrender themselves, or be outlawed.] For the process is sent out to this end, that either the party shall come in to answer and to be justified by the law, or else that he shall, for his contumacy, be deprived of the benefit of the law.

Hear and determine.] This power was first given to them by the Statute of the 18 Ed. 3, c. 2, and afterwards confirmed and enlarged by divers other Statutes. Yet this clause doth not, in propriety, make the Justices of the Peace Justices of Oyer and Terminer, because that is a distinct Commission; and therefore a Statute limiting an offence to be heard and determined before Justices of Oyer and Terminer, gives not the power therein to Justices of the Peace. And thereupon it is said, that although they have power to hear and determine felonies, yet they cannot deliver a person suspected thereof, by proclamation, (as Justices of gaol delivery may,) until an inquisition taken; but if an inquisition be taken, and an *ignoramus* found, they may deliver him as it seems. Likewise, although Commissioners of Oyer and Terminer may indict and try at the same Sessions, yet it hath been ruled otherwise in cases of Justices of the Peace, unless by consent: but certainly, constant usage and learned opinion must give that exposition upon those resolutions that it must extend only to popular actions or indictments for misdemeanors, and not to cases of felony.

By fines, ransoms, amerciaments, forfeitures, and other means,—to chastise and punish.] But the Justices may not award any recompense to the party wronged, otherwise than by persuasion. Nevertheless these words are inserted, not as of necessity, (for the punishment of all offenders is implied in the word *determine*,) but for the plainer declaration of the Justice's power, and for the more assured terrifying of offenders.

If a case of difficulty shall happen to arise.] That is a difficulty in point of law.

Then let judgment in nowise be given.] But yet if they

III. SOME GENERAL DIRECTIONS RELATING TO JUSTICES OF THE PEACE, NOT FALLING UNDER ANY PARTICULAR TITLE OF THIS BOOK.

REGULARLY, Justices of the Peace ought not to execute their office in their own case, but cause the offenders to be convened or carried before other Justices, or desire the aid of some other Justice being present. The Mayor of Hereford was laid by the heels, for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, though he by the charter was sole Judge of the Court. Neither can a Justice act at Sessions, where a matter, which concerns any office he may hold, comes in question. An order of removal of a poor person was quashed, because one of the Justices who made the order, was at the time an inhabitant of the place from whence the pauper was removed, and charged to the poor rate there. And by the Court, no rule of law or reason is more established, than that a Judge ought to stand disinterested.

Yet in some cases, if the Justice shall act in his own cause, it seems to be justifiable, as when a Justice shall be assaulted, or (in the doing his office especially) shall be abused to his face, and no other Justice present with him; then it seems he may commit such offender until he shall find sureties for the peace or good behaviour, as the case shall require. But if any other Justice be present, it were fitting to desire his aid. If a Justice exceed his authority in granting a warrant, yet the officer must execute it, and is indemnified for so doing; but if it be a case in which he hath no jurisdiction, or in a matter whereof he hath no cognizance, the officer ought not to execute such warrant, so that the officer is bound to take notice of the authority and jurisdiction of the Justice. [But see hereafter, the Act respecting the protection of Justices, constables, and other officers, with regard to the execution of warrants.] If a Justice send a warrant to a constable to take up one for slander, or the like, the Justice hath no jurisdiction in such cases, and the constable ought to refuse the execution of it.

Where an Act of Parliament, gives power to two Justices finally to hear and determine any offence, or when they are to do any other *judicial act*, as making an order of bastardy,—adjudging the settlement of a pauper,—appointing Overseers of the poor,—allowing the indentures of a parish apprentice, and such like, it is necessary that they should be both together to hear the evidence, and to consult together.

In respect to granting a *supersedeas* in bailable offences, it is said, that the legality of it is very doubtful, and that at any rate it cannot hold where the party is convicted in the first

Justice not to act in his own Case.

Assaulting or Abusing a Justice.

Where Justices should be together when acting jointly.

instance as a rogue and vagabond, and committed in execution, for there he is clearly not bailable.

Hearing a
party before
convicting
him.

In summary convictions, the party ought to be heard, and for that purpose ought to be summoned in fact ; and if the Justice proceed against a person without summoning him, it would be a misdemeanor in him, for which an information would lie. But before an information is granted, the Court will first require that the conviction be removed before them.

When a Justice is convicted on an information, he must appear in Court, in person, to receive judgment.

Refusing to
act.

If a Justice of the Peace refuses to proceed in a cause depending before him, a mandamus may be issued to compel him to do so, and to determine the matter.

Making Re-
cords.

Where a special authority is given to Justices out of Sessions, it ought to appear in their orders, that such authority was exactly pursued. In all cases where Justices may hear and determine out of Sessions, (viz., on their own view, or confession, or oath of witnesses,) the Justice ought to make a record in writing under their hands, of all the matters, and proofs ; which record notwithstanding in many cases they may keep by them. In all cases of convictions, the Justices should return the convictions to the next Sessions.

Where a
Warrant is to
be issued.

On the point, whether a Justice may issue his warrant for offences cognizable only in the Sessions, Mr. Hawkins saith thus : It seems that anciently no one Justice could legally make out a warrant for an offence against a penal Statute, or other misdemeanor, cognizable only by a Sessions of two or more Justices, for that one single Justice hath no jurisdiction of such offence ; and regularly, those only who have jurisdiction over a cause can award process concerning it, yet the long, constant, universal, and uncontrolled practice of Justices of the Peace, seems to have altered the law in this particular, and to have given them an authority in relation to such arrests, not now to be disputed. However, it seems best in ordinary cases, and more consonant to the practice of the Superior Courts, to issue a summons against the offender, and not a warrant in the first instance : unless in cases of felony, or where the offender in other respects is to suffer corporal punishment. 3 *Burn's*, 129 to 131. (NOTE. In these last mentioned cases, a warrant in the first instance is the only proper process.)

An Attorney has no right to interfere with the duties of a Magistrate in his own Justice room, and therefore, where a criminal information was moved for against two Justices, on the ground of their having deprived the defendant of legal assistance, by excluding his Attorney from the Justice room, (no corrupt motive being imputed to the Magistrates,) the Court refused to

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interfere. One Judge said, it might be a different thing where counsel are employed, but an Attorney in all events has no right to be present. 3 *Burn's*, 133.

By the 39 G. 3, c. 10. 1 V. 409, "If any Justice in General Sessions, shall quit the Court without leave, before the business of the day is completed, his name shall not be entered by the Clerk, as present on that day. The names of Justices who wholly neglected to attend at any term of the General Sessions, shall be returned into the Supreme Court by the Clerk of the Peace, and if no sufficient excuse is given, they shall be reported to the Governor and removed from office. Justices are required and bound to attend every term of the Supreme Court, on being summoned by the Sheriff fourteen days previous. Nothing in the Act to extend to such as are Justices of the Court of Common Pleas." *Perpetual*.

Attendance in Sessions and Supreme Court.

By the 7 W. 4, c. 15, Sess. 1837. "No Magistrate, or Justice of the Peace, (except in the town of Halifax,) shall be allowed or considered eligible to hold or take out any tavern license for the retail of ardent spirits. *Temporary*."

IV. THEIR INDEMNITY AND PROTECTION BY THE LAW, IN THE RIGHT EXECUTION OF THEIR OFFICE ; AND THEIR PUNISHMENT FOR THE OMISSION OF IT.

A JUSTICE of the Peace is strongly protected by the law, in the just execution of his office. In the first place, he is not to be slandered or abused. In an action by a Justice of the Peace, for these words spoken to him in a discourse concerning the execution of his office—*You are a rascal, a villian and a liar*, the Court determined, that though *rascal* and *villain* were uncertain, yet being joined with *liar*, and spoken of a Justice of the Peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff.

It has been determined that an indictment lies for saying of a Justice in the execution of his office—"You are a rogue and a liar. In this case the Court said, The allowing the defendant might be committed, shews that the words were indictable. It is true the Justice may make himself Judge, and punish him immediately : but still, if he thinks proper to proceed less summarily, by way of indictment, he may. The true distinction is, that where the words are spoken in the presence of the Justice, there he may commit ; but where it is behind his back, the party can only be indicted for a breach of the peace.

Where Justices may commit for abuse.

Whether a Magistrate, not sitting as Chairman of a

Court, but in his private office, can commit for a contempt, does not appear to have been expressly decided. Clearly, however, such a commitment by way of punishment, made by word of mouth only, without warrant in writing, cannot be supported, for it is clearly laid down by Hawkins and Lord Hale, that such a commitment by a Magistrate *must be made by warrant in writing.* 3 *Burn's*, 134.

The following Forms of Commitment for insulting a Justice in the execution of his office, are given by Mr. Toone, and Mr. Chitty, and are also to be found in 3 *Burn's*, 135—6.

To the Constables of the township of — in the county of —, and to the keeper of the common gaol, at — in the said county.
County of }

WHEREAS A. B., being personally present to wit. } this day, at — in the said county, before me, S. P., Esquire, one of His Majesty's Justices of the Peace in and for the said county, to answer and make his defence to a certain information before me exhibited against him, for— [state the offence,] and being so personally present before me, hath this day been guilty of divers gross insults and contemptuous behaviour to me the said Justice, then being in the actual execution of my office, as such Justice of the Peace as aforesaid, by accusing me of partiality and injustice in the execution of my office, [or as the case may be.] And whereas the said A. B., in consequence of such his insolent and contemptuous behaviour, is now here by me the said Justice required to find sureties for his good behaviour; that is to say, two sufficient sureties to become bound with him in a recognizance in the sum of — pounds each, conditioned for the personal appearance of the said A. B. at the next General Sessions of the Peace to be holden in and for the said county, and that in the mean time he should be of good behaviour; but that the said A. B. hath refused to find sureties, and to become bound in such recognizance as aforesaid. These are therefore to command you, the Constables of the township of — aforesaid, to convey and deliver the said A. B. into the custody of the keeper of the common gaol at — in the said county, together with this my warrant; and I hereby command you the said keeper, to receive the said A. B. into your custody in the said county gaol, and him there safely to keep, until he find such sureties, and enter into such recognizance, or be from thence otherwise delivered by due course of law. Given un-

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der my hand and seal at — in the said county, this — day
of —, in the year of our Lord —.

S. P., J. P. [Seal.]

To the Keeper of the Common Gaol at —, in the
county of —.

County of } **RECEIVE** into your custody the body of C.
— } D., herewith sent you by me, A. M., Esquire,
to wit. } one of His Majesty's Justices of the Peace in and
for the said county, and charged by me the said Justice, upon
the view of me, A. M., Esquire, one of His Majesty's Justices
of the Peace in and for the said county, for indecent behaviour,
by insulting me and obstructing me in the due execution of
my office as a Magistrate as aforesaid, against the peace, &c.
Her therefore safely keep in your said custody, for want of
sureties, or until she shall be discharged by due course of law,
and for so doing this shall be your sufficient warrant. Given
under my hand and seal this — day of —, in the year of our
Lord —.

A. M. [Seal.]

A Justice of the Peace is not punishable at the suit of the
party, but only at the suit of the King, for what he doth as
Judge in matters which he hath power by law to hear and de-
termine without the concurrence of any other: but in cases
where he proceeds ministerially rather than judicially, if he act
corruptly, he is liable to an action at the suit of the party, as
well as to an information at the suit of the King.

Where a Jus-
tice is or is not
punishable.

Where an information was moved for against two Justices,
for arbitrarily and unreasonably refusing to grant an alehouse li-
cence, Ld. Mansfield, Ch. J., declared, that the Court of
King's Bench hath no power or claim to review the reasons of
Justices of the Peace upon which they form their judgments in
granting licences, by way of appeal from their judgments, or
overruling the discretion in that behalf entrusted to them. But
if it clearly appear that the Justices have been partially, mali-
ciously, or corruptly influenced in the exercise of this discre-
tion, and have (consequently) abused the trust reposed in them,
they are liable to prosecution by indictment or information, or
even possibly by action, if the malice be very gross and in-
jurious. If their judgment is wrong, yet their heart and inten-
tion pure, they cannot be punished. And he declared, that he
should always lean towards favouring them, unless partiality,
corruption, or malice should clearly appear. And another of
the Judges explicitly stated, that the rule is invariable, that the
Court will never interpose to punish a Justice of the Peace for

a mere error in judgment. The rule to shew cause was discharged with costs.

In another case, the Court were most explicit in their declaration, that even where a Justice acts illegally, yet if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever, the Court will never punish him in the extraordinary mode of an information, but leave the parties complaining to their ordinary legal remedy, or method of prosecution, by action or by indictment.

But if they act improperly, and knowingly, information shall be granted, as in two cases for granting ale licences, previously refused by other Justices on good grounds, informations were granted.

And a Justice shall not be liable to be punished both ways, that is both criminally and civilly, but before the Court will grant an information, they will require the party to relinquish his civil action, if any such is commenced.

By 54 G. 3, c. 15. 2 V. 121, Any action against a Justice of the Peace, for any thing done by him by virtue of his office, shall be laid in the county or district where the fact complained of was committed, and the Justice or Justices may plead the general issue to such action, and give the special matter in evidence.

Sec. 2. No writ shall be sued out, nor any summons or process at the suit of a subject shall be served on any Justice, for any thing done by him in the execution of his office, until notice of such intended writ or process shall have been delivered to him, or left at his usual place of abode, at least one calendar month before the suing out or serving the same; in which notice shall be plainly expressed the cause of action which such party has, or claims to have against such Justice, and the party or his Attorney shall affix his name and place of abode to the said notice.

Sec. 3. Such Justice may at any time within one calendar month after such notice given, tender amends to the party complaining, or to his Attorney; and if the same is not accepted, he may plead such tender in bar to the action, together with the plea of not guilty, and any other plea with leave of the Court; and if upon issue joined, the Jury shall find the amends tendered to have been sufficient, they shall give a verdict for the defendant; and in such case, or if the plaintiff shall be a nonsuit, or shall discontinue, or if judgment be given for the defendant upon demurrer, the Justice shall be entitled to the like costs as if he had pleaded the general issue only. And if the Jury shall find that no amends, or not sufficient were tendered, and also against the defendant on such

Statute for
protection of
Justices.

other plea, & damages as the costs.

Sec. 4. Against such grounded on unless it appears in the county or district where the fact complained of was committed, and the Justice or Justices may plead the general issue to such action, and give the special matter in evidence.

Sec. 5. or shall have the same by the Court such informations and judgments against the defendant is

Sec. 6. by the plaintiff as is contained in the Statute

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If a Justice his office, may move towards may the Court will refusing or as for misconduct in the issuing exceeding a were instituted against

other plea, they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he shall recover with costs.

Sec. 4. No such plaintiff shall recover any verdict against such Justice in any case when the action shall be grounded on any act of the defendant as Justice of the Peace, unless it appear on the trial, that the action is laid in the county or district where the fact complained of was committed, and unless also it is proved on the trial of such action, that such notice was given as aforesaid; but in default thereof, such Justice shall recover a verdict and costs as aforesaid.

Sec. 5. If the Justice shall neglect to tender amends, or shall have tendered insufficient, before the action brought, he may by leave of the Court, before issue joined, pay into Court such sum as he shall see fit, whereupon such proceedings and judgment shall be had as in other actions where the defendant is allowed to pay money into Court.

Sec. 6. And no evidence shall be permitted to be given by the plaintiff on the trial of any cause of action, except such as is contained in the notice aforesaid.

Sec. 10. No action shall be brought against any Justice for any thing done in the execution of his office, unless commenced within six months after the act committed. *Perpetual.*

By the 10 G. 4, c. 44, 4 V. 69, "In actions against Justices for any of their proceedings under any British or Provincial Statutes, they may give all such proceedings in evidence under the plea of the general issue, or any other brief plea. *Perpetual.*"

Magistrates are protected in an action of trespass by a subsisting conviction, good upon the face of it.

In an action against a Magistrate for a malicious conviction, it is not sufficient for the plaintiff to shew that he was innocent of the offence of which he was convicted, but he must also prove from what passed before the Magistrate, that there was a want of probable cause.

If a Justice will not, on complaint to him made, execute his office, or shall misbehave in his office, the party grieved may move the Court of K. B. for an information, and afterwards may apply to have him put out of the commission. The Court will grant an information against a Justice, as well for refusing or criminally neglecting to act on any given occasion, as for misconducting himself in his office. Any fraud or misconduct imputed to Magistrates in proceeding, notwithstanding the issuing of a certiorari, may be a ground for a criminal proceeding against them, and *Ld. Kenyon* said, he believed there were instances in which a criminal information had been granted against Magistrates, acting in Sessions. 3 *Burn's*, 143-4.

Refusing to act.

Justice committing first
Assault.

But the Court refused a criminal information against a Magistrate, for returning to a writ of certiorari, a conviction of a party, in another and more formal shape than that in which it was first drawn up, and of which a copy had been delivered to the party convicted, by the Magistrate's Clerk, the conviction returned being warranted by the facts.

An information was moved for against the defendant, for assaulting and beating a Justice of the Peace in the execution of his office. On shewing cause, the question was, whether the defendant could justify, the Justice having struck him first. Lord Hardwicke, C. J. said, "He may justify it, for though a Magistrate is protected by the law, whilst he is in the execution of his office, yet in this instance he hath forfeited that protection by beginning a breach of the peace himself. 3 *Burn's*, 144.

The acts of a Justice of the Peace who has not duly qualified, are not absolutely void, and therefore, persons seizing goods under a warrant of distress signed by a Justice who had not taken the oaths at the General Sessions, nor delivered in the certificate required, are not trespassers. 3 *Burn's*, 790.

For the proceedings relating to convictions before Justices, and for a general Form of Conviction, see Title,—Conviction. Other matters relating to the very extensive office of this Magistrate, will be found under the several appropriate Titles of this Book.

LANDLORD AND TENANT.

By 19 G. 3, c. 10. 1 V. 217, Upon complaint on oath made before any two Justices of the Peace, of any wrongful or unlawful holding over of any tenant, after the expiration of his term, of any houses, lands or tenements, or other possessions where such Justices reside, after possession demanded, and warning having been given to such tenant, in manner as is hereafter mentioned, to remove, it shall and may be lawful for such Justices, by warrant, to cause such tenant or tenants, or other person in possession, to be arrested and detained in custody until he, she, or they, find sufficient security for personal appearance at the next Supreme Court, there to answer such complaint.

By Sec. 2, the Supreme Court shall enquire into the cause of detention, and if upon trial by a jury, it shall be found to be illegal, the Court by writ shall cause the owner to

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be repossessed of his property ; and the party grieved may by action recover treble rent and costs.

Sec. 3. When any house or tenement shall be let by the year, three months warning shall be given ; and when by the month, one month's warning ; and when by the week, one week's warning shall be given to the tenant in possession. *Perpetual.*

There is no distinction between houses and lands, as to the time of giving notice to quit. The notice ought to be in writing, and it should be certain and clear, and not optional or ambiguous. 1 *Burn's*, 725.

Form of Complaint of overholding possession of a Tenement after the expiration of the Term therein, pursuant to the foregoing Stat. 19 G. 3, c. 10.

County of } THE information and complaint of A. C. of
 } — in the said county of —, yeoman, made on oath before us, A. M. and A. B., Esquires, two of His Majesty's Justices of the Peace in and for the said county, on the — day of —, in the year of our Lord one thousand eight hundred and —.

The said A. C. saith, that on the — day of —, in the year —, he the said A. C. did lease and let to A. O. of — in the said county, labourer, a certain dwelling house and premises thereunto belonging, of him, the said A. C., situate at — in the said county, for the term of —, at a certain rent agreed upon between them, and that by virtue thereof the said A. O. entered into the occupation and possession of the said dwelling house and premises, pursuant to the said letting, and continued to hold the same during the said term ; and that the said A. O., since the expiration of the said term, hath wrongfully and unlawfully overheld and detained, and still continues to overhold and detain, the occupation and possession of the said dwelling house and premises, from and against him the said A. C., although he the said A. C. hath given the said A. O. due notice to quit the said house and premises, and although, since the expiration of the said term, the said A. C. hath demanded the possession of the said dwelling house and premises of and from him the said A. O.

And hereupon the said A. C. prayeth a warrant of us the said Justices, to issue against the said A. O. to compel him to answer unto the said complaint.

Before us, *(signature)* A. C.
 A. M., J. P.
 A. R., J. P.

Warrant thereon.

County of } To each and every of the Constables of the
 } township of — in the said county of —.

[Seal.]

[Seal.]

WHEREAS A. C., of — in the said county, yeoman, hath made information and complaint upon oath, before us, A. M. and A. R., Esquires, two of His Majesty's Justices of the Peace in and for the said county, that — [here state the facts of the case as set forth in the complaint.] These are therefore to command you, in His Majesty's name, forthwith to apprehend the said A. O., and to bring him before us the said Justices, that he may be required to find sufficient sureties to answer to the said complaint, and may be further dealt with according to law. Herein fail not. Given under our hands and seals at —, the — day of —, in the year of our Lord one thousand eight hundred and —.

A. M., J. P.

A. R., J. P.

Directions.

When the party is brought before the Justices on the Warrant, he must be required, according to the terms of the Statute, to find sureties for his appearance to answer to the complaint at the next term of the Supreme Court in the county. The course of proceedings relative to taking such security, with the requisite Forms, will be as in similar cases of taking bail, and will be found under the Titles,—Bail, and Recognizance.

LARCENY.

I. OF GRAND LARCENY IN GENERAL.

THE true meaning of larceny is,—“the felonious taking the property of another, without his consent, and against his will, with intent to convert it to the use of the taker.” It is of the essence of robbery or larceny, that the goods be taken against the will of the owner. Grand larceny is a felonious and fraudulent taking and carrying away by any person, of the mere personal goods of another, of the value (according to the Provincial Act 32 G. 2, c. 13. 1 V. 18,) of twenty shillings or upwards. The offence has been well defined to be “the wrongful taking of goods, with intent to spoil the owner of them.” 3 *Burn's*, 176.

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Felonious and fraudulent taking.) Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or mis-animadversion; as where persons break open a door in order to execute a warrant, which will not justify such a proceeding; for in such case there is no felonious intention. For it is the mind that makes the taking of another's goods to be felony, or a bare trespass, but because the variety of circumstances is so great, and the complication thereof so mingled, that it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; the same must be left to the due and attentive consideration of the Judge and Jury. Only in general it may be observed, that the ordinary discovery of a felonious intent, is, if the party do it secretly, or being charged with the goods, deny it.

If goods be taken on a claim of right or property in them, it will be no felony; at the same time it is matter of evidence, whether they were *bona fide* so taken, or whether they were not taken from the person actually possessing them, with a thievish and felonious intent. And therefore, obtaining possession of goods by a fraudulent claim of right, or by a fraudulent pretence of law, and then running away with them, would be a felony.

Taking on
claim of right.

It may be that the taking is no more than a trespass, and the circumstances in such case must guide the judgment. As where a man takes another's goods openly, before him, or before other persons, otherwise than by apparent robbery, or having possessed himself of them, avows the fact before he is questioned. However, in all these cases, the concurrent conduct of the person accused must be considered, for the purpose of determining whether or not the act done by him be felony.

Taking by
trespass.

But nevertheless, doing it openly and avowedly doth not excuse from felony. As where a man came to a market to sell a horse, and a jockey coming thither to buy a horse, the owner delivered his horse to the jockey to ride up and down the market, to try his paces, but instead of that, the jockey rode away with the horse; this was adjudged felony. So where a person came into a sempstress's shop, and cheapened goods, and ran away with them out of the shop, openly in her sight, this was adjudged to be felony. So where a man comes into a house by colour of a writ of execution, and carries away the goods: or sues out a replevin to get another man's horse, and then runs away with him; this is felony under colour of law.

It is laid down in the books, that if one lose his goods Finding.

and another find them, though he convert them *animo furandi* to his own use, yet it is no larceny, for the first taking was lawful. But the doctrine of a taking by finding, must be admitted with great limitation, and must be understood to apply only where the finder really believes the goods to have been lost by the owner, and does not colour a felonious taking under such a pretence. It will not avail therefore, where a man's goods being in a place in which ordinarily and lawfully they are or may be placed, a person takes them with an intention of stealing them. Thus, if a man's horse be going upon a common where he has a right to put him, and another take the horse with intent to steal him, it is no finding, but a felony. So also if the horse stray into a neighbour's ground, or common, it is felony in him that so takes him. If A's sheep stray into B's flock, and B. drives it along with his flock, and by bare mistake shear it, this taking is not a felony; but if he knew it to be another's, and marks it with his mark, this is an evidence of felony.

But even if the place where the goods are found is not one in which ordinarily they would be deposited, circumstances may shew the taking to have been felonious. A man hides a purse of money in his corn mow, his servant finding it, took part of it. If by circumstances it can appear he knew his master laid it there, it is felony; but then the circumstances must be pregnant; otherwise it may reasonably be interpreted to be a bare finding, because the purse was deposited in so unusual a place. But where a gentleman left a trunk in a hackney coach, and the coachman took and converted it to his own use; held to be felony,—for he must have known where he took up the gentleman and his trunk, and where he set him down, and therefore he ought to have restored it to him. The doctrine as to a felonious taking of goods which have been found by the party, has been further confirmed in two more recent cases. In the first, it appeared that a pocket book containing bank notes, had been found by the prisoner in the highway, and afterwards converted by him to his own use. Upon which the Judge observed, that if the party finding property in such manner, know the owner of it, or if there be any mark upon it, by which the owner can be ascertained, and the party, instead of restoring the property, converts it to his own use, such conversion will constitute a felonious taking. And in the other case, the two prisoners (father and son,) were convicted of stealing a bill of exchange, upon evidence of their having found and converted it to their own use, by endeavouring to negotiate it. The Judge stated to the Jury, that it was the duty of every man who found the property of another, to use

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all diligence to find the owner, and not to conceal the property, (which was actually stealing it,) and appropriate it to his own use.

Lord Hale says, if one man take another man's hay or corn, and mingle it with his own heap or stock ; or take another man's cloth, and embroider it with silk or gold ; such other person may retake the whole heap of corn, or cock of hay, or garment and embroidery also ; and this retaking is no felony, nor so much as a trespass.

There must be an actual taking or severance of the thing from the possession of the owner ; for all felony includes trespass ; and every indictment must have the words *feloniously took*, as well as *carried away* ; from whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away.

The possession of the owner may be actual, or constructive ; that is, he may have the goods in his manual possession, or they may be in the actual possession of another, and at the same time be constructively in the owner's possession ; and they may be his property by virtue of some contract, and yet not have been reduced by him into actual possession ; in which case, his possession is constructive ; they may be placed by him under his servant's care to be by him managed for him ; in this case the owner has a constructive possession. There may be also a possession distinct from the actual property, but arising out of an interest in the goods acquired by contract ; as in the case of one who has possession of goods in pledge, or of goods lent, or let ; such a one has a property (as well as possession) concurrent with the absolute property of the real owner, and either defeasible or reducible into an absolute property, according to the terms agreed upon between him and the actual owner. The above several kinds of possession will all be sufficient to sustain a charge of larceny from the absolute owner.

There are also cases, in which, although the manual custody be out of the owner, and delivered by him to another, yet the possession, absolute as well as constructive, is deemed to remain in him, and the possession of the other to be no more than a bare charge. There is a diversity between a possession and a charge, for when I deliver goods to a man, he hath the possession of the goods, and may have an action of trespass, if they be taken or stolen out of his possession. But my butler or cook that in my house hath charge of my vessel or plate, hath no possession of them, nor shall have an action of trespass as the bailee shall ; and therefore if they steal the plate, &c. it is larceny. So if a taverner set a piece of plate before a man to drink in it, and he carry it away, &c. it is larceny, for it is

Actual taking.

Possession of the Owner.

Goods in charge of another.

Taking by a
Carrier.

no bailment, but a special use to a special purpose. The servant who keeps a key to my chamber, may be guilty of felony in fraudulently taking away the goods therein, for he hath only a bare charge given him. And so if a weaver who has received materials to work, or a miller who has corn to grind, take out part thereof with intent to steal it, it is felony.

Another case is that of the carrier. If while his contract is in the course of completing, he open the pack and take out a part of the goods, he commits a larceny: but if he run away with the whole, it is a breach of trust, and no larceny. So of a tun of wine. But if after arriving at the place where he should deliver his charge, he steal a part or the whole, it is larceny. The foregoing cases seem exceptions to the rule, that no felony can be committed by *his* stealing the goods, *to whom they were delivered* in possession by the owner, in a way which excludes the supposition of their being originally taken with a felonious intent. But in truth the reason of the distinction seems this: Though the carrier, &c. have originally the goods delivered to them upon a trust, yet they are delivered as one whole and inseparable thing, and the only trust committed to him is over them in that state; and therefore his possession is a limited one; but if he separate them, it is exercising an act of ownership not given to him over each part, and is therefore the same as an originally unlawful taking of that individual part, and it is also a carrying away by the mere act of separation. And this distinction should be carefully remembered, as it includes a number of cases very likely to occur in practice, viz. where a part is separated from a thing delivered entire.

Embezzlement
by Servants.

By the common law, therefore, he who had goods delivered to him by the owner, thereby originally gaining a legal possession of them, could not by converting them to his own use with intent to steal, be deemed a felon and guilty of larceny. And it seems that servants stood in the same situation in this respect as strangers; in order, therefore, that masters might be secured from the consequences resulting from the trust they are obliged to repose in their servants, the Statute of the 21 Hen. 8, c. 7, was passed, relating to embezzlements by servants. 3 *Burn's*, 177 to 183.

A similar provision has been made in this Province, by the Act of the 32 G. 2, c. 13. § 18, 1 V. 17, by which it is enacted, "That if any servant or servants shall go away with the caskets, jewels, money, goods, or chattels, delivered to his, her, or their keeping, by his, her, or their master or mistress, with intent to steal the same, and defraud his, her, or their master or mistress thereof, contrary to the trust and

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confidence in them reposed ; or being in service, without assent or commandment of his, her, or their master or mistress, shall embezzle or convert the same to his or her use, with purpose to steal the same, being of the value of forty shillings or above, every such offender or offenders shall, upon due conviction, suffer death as in cases of felony, without benefit of clergy. Provided, that any apprentice or apprentices, within the age of fifteen years, shall be entitled to the benefit of clergy, for the first offence." *Perpetual.*

This Statute extends only to such as were servants to the owner of the goods, both at the time of their delivery and when they were stolen. The goods must have been delivered to the servant, *to keep* for the master, and to be returned to him. If a servant make a suit of clothes of cloth, or shoes of leather, or change one species of corn into another, which in their original state were delivered to him by his master, to keep, he is within the Statute. But no wasting or consuming of goods is within the Statute, however wilful. The Statute does not extend to cases where the servant has a mere charge over the goods, but that is still an offence at common law.

The following are cases of servants, who having had a bare charge committed to them, and stolen the goods so entrusted to them, were adjudged to be guilty of the crime of larceny.—One employed as a clerk in the day time, but not residing in the house, embezzled a bill of exchange which he received from his master in the usual course of business, with directions to transmit it by the post to a correspondent, and it was held to be larceny. Goods delivered to a tradesman's servant to carry to a customer, are still in the possession of the owner, and the servant is guilty of larceny in breaking the package and converting them.

There is another class of cases, in which the master becomes, *by contract* with another, the owner of goods in the actual possession of that other, and which are by the master's direction delivered to his servant for him. If the servant, having thus received the goods, steal them, it is larceny at common law, as in the following case :—A corn factor having purchased a cargo of oats on board a ship, sent his servant with his barge to receive part of the oats in loose bulk ; and the servant ordered some of them to be put into sacks, which he afterwards embezzled : this was holden to be larceny. The fraudulent appropriation by a wharfinger, of oats, in his custody, but not in his legal possession, was held to be a larceny. 3 *Burn's* 183-5.

If the owner deliver his property of his own accord to the prisoner, and there is no fraud in the prisoner to induce him so to do, it will not be larceny, though the prisoner intended to

Goods delivered to the Prisoner.

misapply the property when he took it, and misapplies it accordingly. As where one obtained delivery of a horse sold to him, on promise to return immediately and pay for it, and he rode off and did not return; it was held to be no felony, for here was a complete contract of sale and delivery, the property as well as the possession was entirely parted with.

One writing a letter in the name of another, to a third person, to borrow money, which he obtains by that fraud, is not guilty of a felony, but only of a misdemeanor. 3 *Burn's*, 192—3. [In such cases as these, however, if any false token or counterfeit letter is made use of, to obtain the property, the party may be charged criminally, as for a cheat.]

If the owner has not parted with the *property* in the goods, but only with the possession of them, the question of larceny still remains open.

Where the owner of goods sent them by his servant to be delivered to A., and the prisoner fraudulently procured the delivery of them to himself, by pretending to be A., it was holden to be larceny. Obtaining possession from a person who has the charge of goods, by pretending to be the servant of a person who has bought them, is felony.

Where money or other property is parted with, for the performance of a certain engagement, and the party, instead of complying with such engagement, converts the same to his own use, he is guilty of felony. As in a case where the prosecutor entrusted the prisoner with notes to procure him gold in lieu thereof, but having got possession of the notes, he went away with them, and did not return with the gold as he promised to do.

If credit be given for property for ever so short a time, no felony can be committed in converting it.

Where the delivery is by way of pledge or security, the property in the thing pledged remains in the owner, and therefore larceny may be committed of it, if such delivery were obtained fraudulently, and with intent to steal.

Although in general he who has a possession of any thing on delivery by the owner, cannot commit felony thereof; yet that must be understood, first,—where the possession is absolutely changed by the delivery, which has before been considered, and next,—where such possession is not obtained by fraud, and with a felonious intent. For, if under all the circumstances of the case, it be found, that a party has taken goods from the owner, though by his delivery, with an intent to steal them, such taking amounts to felony. This principle is illustrated by the following cases:—Hiring a horse on pretence of taking a journey, but in truth with intent to steal it,

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and evidencing such felonious intent, by immediately selling the horse, as soon as the party obtained possession of it, was held to be larceny. So obtaining a horse, by pretending that another person wanted to hire it to go to B., but in truth with intent to steal it; and not going to B., but taking the horse elsewhere, and selling him, is larceny.

It may be collected from the foregoing cases, that if a person obtain the goods of another by a lawful delivery, without fraud, although he afterwards convert them to his own use, he cannot be guilty of felony. As if a tailor have cloth delivered to him to make clothes with, or a friend be entrusted with property to keep for the owner's use, which they afterwards severally embezzle. So if plate be delivered to a goldsmith to work or to weigh, or as a deposit, his conversion of it will not be felony. But if such delivery be obtained by any fraud or falsehood, and with an intent to steal, though under pretence of a hiring, or even a purchase; if in the latter case no credit were intended to be given, the delivery in fact by the owner will not pass the legal possession so as to save the party from the guilt of felony. But if the property were intended to pass by the delivery, there can be no felonious taking. 3 *Burn's* 193—200.

And carrying away.] The least removing of the thing taken from the place where it was before, is sufficient for this purpose, though it be not quite carried off. And upon this ground, the guest, who having taken off the sheets from his bed with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny. So also was he, who having taken an horse in a close with an intent to steal him, was apprehended before he could get him out of the close. And such was the case of him who intending to steal plate, took it out of the trunk wherein it was, and laid it on the floor, but was surprised before he could remove it any further. If the thief once take possession of the thing, the offence is complete, though he afterwards return it. As if a robber, finding little in a purse which he had taken from the owner, restore it to him again, or let it fall in struggling, and never take it up again, having once had possession of it.

By any person.] Regularly a man cannot commit felony of the goods wherein he hath a property. If A. and B. be joint tenants or tenants in common of a horse, and A. take the horse, possibly *animo furandi*, yet this is not felony. But under certain circumstances a man may commit felony of his own goods; as if A. bail goods to B. and afterwards, *animo furandi*, steal the goods from B. with design to charge him for the value of them; this is felony.

Lawful delivery of Goods.

A wife may be guilty of larceny by stealing the goods of a stranger ; but not by stealing her husband's goods from his own possession, because in law they are considered but as one person, and she has a kind of interest in his goods. On which account, not even a stranger can commit larceny of such by the delivery of the wife, although he knew they were the husband's goods. But a wife may steal the goods of her husband which have been bailed or delivered to another person ; for he has a temporary special property in them.

The wife cannot commit larceny in the company of her husband ; for it is deemed his coercion, and not her own voluntary act—yet if she do it in his absence, and by his mere command, she is then punishable as if she were sole.

If one steal another man's goods, and afterwards another steal the same from him ; the owner may charge the first or second felon at his choice.

Of the mere personal goods.] If the personal goods savour any thing of the real estate, (that is land, houses, &c.) it cannot be larceny. They ought to be no way annexed to the freehold ; therefore it is no larceny but a bare trespass to steal corn or grass growing, or apples on a tree. But it is larceny to take them, being severed from the freehold, as wood which has been cut, grass in cocks, stones digged out of the quarry ; and this, whether they are severed by the owner or even by the thief himself, if he sever them at one time, and then come again at another time and take them.

With regard to domestic animals, such as horses, oxen, sheep, and the like, there is no doubt that they are the subjects of larceny at the common law. Also domestic birds, as ducks, hens, geese, turkeys, peacocks, &c., and larceny may be committed of their eggs or young ones. It is however, certain, that larceny cannot be committed of such animals in which there is no property, as of beasts that are of a *wild nature*, and unreclaimed ; such as deers, hares, and conies, in a forest, chase or warren ; fish in an open river or pond ; or wild fowls at their natural liberty. There are also some animals, which though they may be reclaimed, yet are considered of so base a nature, that no larceny can be committed of them, such as bears, foxes, monies, cats, ferrets, and the like ; and the same of dogs, by the common law.

Also, the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen, as paper or parchment, on which are written assurances concerning lands, or obligations or covenants, or other securities for a debt, or other chose in action. 3 *Burn's*, 202—9.

[As to bills, &c.,]

It being felony to steal the living animal, the milk, wool, or instances it is not a felony to steal the wool, which is such as the behaviour of

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[As to stealing Treasury notes, and bank notes, bonds, bills, &c., see hereafter, under this Title.]

It being felony to steal the animals themselves, it is also felony to steal the product of any of them, though taken from the living animals. Thus, milking cows at pasture and stealing the milk, was holden to be felony by all the Judges; so pulling wool from the backs of sheep, is felony. But in both these instances it must be understood, that the fact is done fraudulently and feloniously, and not merely from wantonness or frolic; which must be collected from concurrent circumstances, such as the quantity taken, the use to which it is applied, the behaviour of the party, &c. 3 *Burn's*, 210.

Of another.] It is well settled that larceny may be committed by stealing goods the owner of which is *not known*; and that it may be stated in the indictment that the things stolen were the goods of a person to the Jurors unknown. But upon prosecutions of this kind, some proof must be given sufficient to raise a reasonable presumption that the taking was felonious. 3 *Burn's*, 211.

By the 32 G. 2, c. 13, § 22. 1 V. 18, Whosoever shall be found guilty of feloniously taking and carrying away any money, or goods, in any other manner than is before declared and provided for in the Act, or of embezzling any of His Majesty's stores, or the utensils, furniture, or cloathing in any storehouse or hospital of His Majesty, to the value of twenty shillings or more, every such offence shall be larceny and felony; and if the value shall be found by verdict on trial, to be less than twenty shillings, then such offence shall be punishable as petit larceny. [Note. The words in this clause—"in any other manner," &c. refer to previous clauses of the Act, relating to burglary, robberies, and other higher larcenies, distinguished from simple larceny, and which will be treated of hereafter under this Title.]

II. OF PETIT LARCENY.

PETIT Larceny agrees with Grand Larceny in the several particulars before mentioned, except only the value of the goods, (and except as hereafter follows,) so that wherever an offence would amount to grand larceny, if the thing stolen were of the value of twenty shillings, it is petit larceny if it be under that value.

By the 3 Ed. 1, c. 15, Persons indicted of petit larceny, if they were not guilty of some other larceny aforetime, are bailable by Justices of the Peace. And it seems to be agreed, that there is no necessity that such person be of good reputa-

tion : but yet if the crime be open and manifest, it seems that they ought not to be bailed ; but if there be any colour of probability for their innocence, it seems most agreeable to the intention of the Statute, to bail them. For a Justice of the Peace before whom an offender shall be brought for petit larceny out of Sessions, may not punish him by his discretion, and so let him go ; but must have him committed or bailed, to the intent he may come to his trial as in cases of other felonies. 3 Burn's, 214.

III. LARCENY FROM THE PERSON.

IF the goods be taken from a man's person, the offence receives a farther degree of guilt, and if it be attended with putting him in fear, it is called robbery, for which, see that Title. If it be without putting him in fear, then it is called barely, *larceny from the person*. And as to this offence, it is enacted by the Statute of the 32 G. 2, c. 13. 1 V. 17, "that if any person or persons shall feloniously take money or goods from the person of any other, privily, without his knowledge, each and every of such offenders, their aiders and abettors, shall, upon due conviction, suffer as felons without benefit of clergy." *Perpetual*.

IV. LARCENY FROM THE HOUSE.

LARCENY from the house, is not distinguished at common law from simple larceny, unless where it is accompanied with the circumstance of breaking the house at night, when it falls under another description, that of burglary. In England, by various Acts of Parliament, the benefit of clergy is taken away from larcenies committed in a house in almost every instance, and in this Province, by the Statute of the 32 G. 2, c. 13. 1 V. 17, it is enacted, "That if any person or persons shall rob any dwelling house in the day time, any person being therein, or break any dwelling house, shop, or warehouse, thereunto belonging, or therewith used, in the day time, and feloniously take away any money or goods of the value of five shillings, therein being, although no person shall be within such dwelling house, shop or warehouse ; or shall rob any other, or feloniously take away any goods in any dwelling house, the owner or any other person being therein, and put in fear, each and every of the offenders aforesaid, their aiders and abettors, shall upon due conviction, suffer as felons without benefit of clergy." *Perpetual*.

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V. LARCENY AND EMBEZZLEMENT FROM LODGINGS.

THIS is not a felony at common law ; but by the 32 G. 2, c. 13. 1 V. 17, it is enacted, " That if any person or persons shall take away with an intent to steal, embezzle, or purloin, any goods, chattels, or furniture, which by agreement they are to use, or shall be let to them to use, in his, her, or their lodging, such taking, embezzling, or purloining, shall be adjudged to be larceny and felony." *Perpetual.*

A ready furnished house, the whole of which is let to the party, is not a lodging within the meaning of the Statute. See 3 Burn's, 223.

NOTE. As the benefit of clergy is not taken away from this offence, it is not a capital felony, but is only punishable in the same manner as a simple larceny.

VI. LARCENY OF BILLS, NOTES, AND OTHER WRITINGS, FOR PAYMENT OF MONEY.

By the Stat. 32 G. 2, c. 13. 1 V. 17, If any person or persons shall steal or take by robbery any bills of exchange, bonds, warrants, bills, or promissory notes for the payment of money, being the property of any other person, notwithstanding any the said particulars are termed in law a *chose in action*, it shall be deemed felony of the same nature, and with or without the benefit of the clergy, or of this Act, in the same manner it would have been if the offender had stolen or taken by robbery any other goods of the like value with the money due on such bills of exchange, bonds, warrants, bills or notes, or secured thereby, and remaining unsatisfied ; and shall suffer such punishment as if he, she, or they, had stolen other goods of the like value. Provided, that no attainder for any such offence so made felony, shall work any corruption of blood, loss of dower, or disherison of heirs. *Perpetual.*

With regard to the stealing of the Treasury notes, which have been issued in this Province, it is enacted by the several Statutes of the 9 G. 4, c. 3. 4 V. 23—10 G. 4, c. 43. 4 V. 69—11 G. 4, c. 9. 4 V. 83, and the 2 W. 4, c. 64. 4 V. 191, " That if any person or persons shall feloniously steal, take, or carry away, any Treasury note or notes heretofore issued under any former Act or Acts, or hereafter to be issued under either of the before mentioned Acts respectively, such person or persons shall be deemed and taken to be guilty of the same offence as if such person or persons had stolen, taken,

Treasury
Notes.

and carried away, so much money as the value expressed on the face of the Treasury note or notes so stolen, taken, or carried away, shall or may be." *Perpetual.*

Bank Notes.

Concerning Bank Notes, the Statute of the 4 W. 4, c. 24. 4 V. 276, enacts, "That if any person or persons shall feloniously steal, take, or carry away, or attempt or intend to steal, take, and carry away any such undertaking mentioned in the second clause of this Act, such person or persons shall be adjudged, deemed, and taken to be guilty of the same offence, as if such person or persons had stolen, taken, or carried away, or had attempted or intended to steal, take, and carry away, so much money as the value, sum, or amount expressed on the face of such undertaking shall or may be. The undertakings here referred to, are described in the said second clause of the Act, as follows,—“Undertakings now issued, or hereafter to be issued, and whether made, designed, or purporting to be promissory notes, or bank notes or bills, or issued, or purporting to be issued as and for and to serve the like purposes as notes or bills of bankers, or of a banking company, or as and for paper money, or circulating currency; and whether the same be payable to a real or fictitious person, or to the bearer thereof; or be, purport, or be designed to be negotiable or transferable by indorsement or delivery; or whether the same be, or purport to be, payable absolutely in gold or silver, or either in specie, gold or silver; or in notes of the Provincial Treasury, or other body corporate, or politic, company, partnership, person or persons whomsoever; or in any other mode, and whatsoever be the sum for which such writings respectively shall be made.” *Perpetual.*

VII. PUNISHMENTS OF GRAND AND PETIT LARCENY.

At common law the judgment for *grand larceny* is death; but the party may have the benefit of clergy, unless in cases where he is ousted by Statute. But by the 56 G. 3, c. 6. 2 V. 201, (which includes petit as well as grand larceny,) it is enacted,—“That it shall and may be lawful for the Court before whom any person or persons shall be convicted of any clergyable felony, larceny, of receiving stolen goods, knowing them to be stolen, or other lesser criminal offence, to sentence the offender to be put and kept to hard labour in the house of correction at Halifax, or elsewhere, or upon the highways or other public works in the Province, for any term or time not exceeding seven years, on such terms and conditions as shall appear to be best calculated to promote the reformation of the offender, a good example to others, and a just retribu-

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By the previous Statutes of the 32 G. 2, c. 13, and the 14 & 15 G. 3, c. 7, The punishment of public whipping, or of imprisonment, was prescribed in cases of petit larceny; but these punishments may be considered to be superseded or virtually repealed by the aforesaid Act of the 56 G. 3, c. 6. It is however provided by the said Statute of the 32 G. 2, c. 13, that in cases of larceny, it shall be lawful for the Court before whom any such offender shall be convicted, to order him to make full restitution, and in default thereof to commit such offender to the house of correction, there to be put to hard labour for a term not exceeding three months, as the Judges in their discretion shall think fit. *Perpetual.*

VIII. RECEIVING STOLEN GOODS.

By the 32 G. 2, c. 13. 1 V. 17, If any person or persons shall buy or receive any goods that shall be stolen, knowing the same to be stolen, he, she, or they shall be deemed accessaries to the felony after the fact; and it shall be lawful to prosecute and punish persons buying or receiving stolen goods, knowing the same to be stolen, or that shall be accessary to such felony, before or after the fact, as for a misdemeanor, to be punished by fine and imprisonment, although the principal felon be not before convicted of the said felony, which shall exempt the offender from being punished as accessary, if the principal shall be after convicted. *Perpetual.*

IX. TAKING A REWARD TO HELP TO STOLEN GOODS.

By the British Statute, 4 G. 1. c. 11, which is extended to the British dominions in America, it is enacted, "That whenever any person taketh money or reward, directly or indirectly, under pretence, or upon account of helping any person or persons to any stolen goods or chattels; every such person so taking money or reward as aforesaid, (unless such person doth apprehend, or cause to be apprehended, such felon who stole the same, and cause him to be brought to trial for the same, and give evidence against him,) shall be guilty of felony, and suffer the pains and penalties of felony, according to the nature of the felony committed in stealing such goods, and in such and the same manner as if such offender had himself stolen such goods and chattels, in the manner and with such circumstances as the same were stolen."

There is also another offence concerning stolen goods,

Compounding
a Felony.

anciently denominated *theftbote*, and now designated a *compounding of felony*, which is, where the party robbed, not only knows the felon, but also takes his goods again, or other amends, upon agreement not to prosecute. It is said to have been anciently punishable as felony, but is now punished only with fine and imprisonment, unless it be accompanied with some degree of maintenance given to the felon, which makes the party an accessory after the fact. But the barely taking again one's own goods, which have been stolen, is no offence at all, unless some favour be shewn to the thief. 1 *Russel*, 210.

Information for Larceny.

County of } The information and complaint of A. I. of
_____ } —, in the county of —, yeoman, made on
oath, before me, A. M. Esquire, one of his Majesty's Jus-
tices of the Peace for the said county, the — day of —
in the year of our Lord one thousand eight hundred and —

The said A. I. on his oath saith, that yesterday in the night, or early in the morning of this day, divers goods of him the said A. I. to wit, — have feloniously been stolen, taken, and carried away from the house of him the said A. I. at — aforesaid, in the county aforesaid, and that he hath just cause to suspect, and doth suspect, that A. O. late of — in the said county, labourer, feloniously did steal, take, and carry away the same, [or otherwise, stating the case according to the facts.]

And thereupon he the said A. I. prayeth that justice may be done in the premises.

A. I.

Before me,

A. M., J. P.

Warrant for Larceny.

County of } To each and every of the Constables of the
_____ } township of — in the said county, and to the
[Seal.] several Constables of the other townships of the
said County, respectively.

FORASMUCH as A. I. of — in the county of — yeoman, hath this day made information and complaint upon oath before me, A. M., Esquire, one of His Majesty's Justices of the Peace for the said County of —, that yesterday in the night, or early in the morning of this present day, divers goods of him the said A. I., to wit — have feloniously been stolen, taken and carried away from the house of him the said A. I.,

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at — aforesaid, in the county aforesaid; and that he hath just cause to suspect, and doth suspect, that A. O., late of — in the said county, labourer, feloniously did steal, take and carry away the same, [or otherwise, according to the facts stated in the information.] These are therefore to command you and every of you, forthwith to apprehend him the said A. O. and to bring him before me, to answer unto the said information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, at — aforesaid, the — day of —, in the year of our Lord one thousand eight hundred and —.

A. M., J. P.

The Form of a Warrant to search for stolen goods, will be found under the Title,—Warrant.

The proceedings before Justices on informations of larceny, will be the same as in other felonies, and will be found sufficiently set forth and explained, under the respective Titles,—Information; Examination; Bail; Commitment.

For stealing wrecked ships or goods, see Title,—Wreck.

It may be well to observe here, that by the Statute of the 26 G. 3, c. 2, 1 V. 243, Special Sessions may be held for the trial of all simple larcenies, for which more fully, see Title,—Sessions.



LEATHER, see HIDES.

LETTERS COUNTERFEIT, &c., see CHEAT.



LETTERS, (THREATENING.)

By the 32 G. 2, c. 13. 1 V. 18, "Whosoever shall knowingly send any letter without any name, or signed with a fictitious name, demanding from any person or persons, money or other valuable thing, such offender or offenders being duly convicted thereof, shall suffer as felons without benefit of clergy." It is now not necessary to state the words of the

This enactment is similar to that contained in the British

Statute, 9 G. 1, c. 22, called the Black Act, and in both, the offender is made liable to death.

A threatening letter, in which the writer makes himself known to the person to whom it is sent, either from its hand writing, or by the subject of its contents, though not signed by the writer in any name, is not within the Statute, for by making himself known in the letter, it is the same thing as if he had signed his name to it. Sending a letter signed with initials only, is sending a letter *without a name*. See 3 *Burn's*, 244.

LIBEL.

A LIBEL, in a strict sense, is taken for a malicious defamation, expressed either in *printing or writing*, and tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and to expose him to public hatred, contempt, or ridicule. It matters not whether the libel be true, or whether the party against whom it is made be of good or bad fame. But this is to be understood, only when the prosecution is by information or indictment. It is otherwise in an action to recover damages for a libel. 3 *Burn's*, 248.

A criminal prosecution for a libel can only be sustained where the defamation is expressed either in *printing, or writing, signs, or pictures*. No defamatory words *spoken* will sustain a criminal proceeding, as for that offence. See 3 *Burn's*, 249.

It is certain that not only he who composes a libel, or procures another to compose it, but also he who publishes, or procures another to publish it, is in danger of being punished for it.

Also, it hath been resolved, that the sending of a letter full of provoking language, to another, without publishing it, is highly punishable, as manifestly tending to a disturbance of the peace.

In cases of libel the offenders may be condemned to pay such fine, and also to suffer such corporal punishment as to the Court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender.

Libels having a direct and immediate tendency to a breach of the peace, are indictable in the Sessions.

A Justice of the Peace has the power of issuing a warrant to apprehend a person charged by information on oath, with the publication of a libel, and of requiring him to find bail to answer such charge, and for want of it, of committing him to prison, there to remain until he be delivered by due course of law. 3 *Burn's*, 251—5, 799.

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LICENSED HOUSES, see SPIRITUOUS LIQUORS,
TAVERNS, &c.

LIGHT HOUSES.

By 4 W. 4, c. 25. 4 V. 278, "It shall be lawful for any Collector of light duties, to call to his aid in the execution of the Act, all Magistrates, Constables, and Peace officers, and all other His Majesty's subjects, who are hereby required, when called upon, to afford such Collector every aid and assistance in their power, for the purpose of carrying into effect the several provisions of the Act." *Temporary.*

LIME.

By the Statute 32 G. 3, c. 4. 1 V. 292, "All lime exposed to sale in any part of this Province, shall be measured by the officers appointed for that purpose; and the officers so appointed shall be sworn to the faithful discharge of their duty, and upon refusal to accept of the said office, or being guilty of any neglect or misbehaviour in the execution of the duties thereof, they shall forfeit and pay for the use of the poor of the town wherein they reside, a sum not exceeding three pounds, to be recovered before any two Justices of the Peace for the same county." *Perpetual.*

By 56 G. 3, c. 21. 2 V. 210, "All lime sold, or offered for sale, shall be measured and inspected by one of the officers appointed for that purpose; and all lime not sufficiently burnt, or otherwise of good and merchantable quality, shall be seized by the said Inspector; and every person offering for sale, or selling by the hogshead, any lime in hogsheads, that shall not contain at the least eight Winchester bushels heaped, or ninety-six gallons, shall forfeit for every bushel of which every and each hogshead shall be deficient, the sum of ten shillings, and so in proportion for every part of a bushel, together with the hogshead or cask in which such Lime shall be contained, which shall be seized by the said Inspector and destroyed.

The Inspector of lime shall receive from the seller thereof, at the rate of sixpence per hogshead, for inspecting and measuring the same.

Sec. 5. If the quantity of lime, seized as aforesaid, shall not exceed thirty-two bushels; and if the deficiency of

lime sold, or offered for sale in hogsheads as aforesaid, shall not exceed twenty bushels, then upon conviction upon the oath of one or more witness or witnesses, before one Justice of the Peace, of the county where the offence shall happen; and if the quantity so seized shall exceed thirty-two bushels, and if the deficiency shall exceed twenty bushels, then upon conviction as aforesaid, in any of His Majesty's Courts of Record in the county where the offence shall happen, the lime so seized shall be adjudged forfeited; and the person who sold, or offered lime for sale, in hogsheads deficient as aforesaid, shall be adjudged to pay the penalty herein before declared, together with the costs of condemnation; of all which penalties and forfeitures, one half thereof shall go to the Inspector or Inspectors in each case respectively employed, for his and their trouble, and expense of storage and prosecution; the remainder to the use of the poor of the county where such convictions shall happen." *Perpetual.*

NOTE. For the course of proceeding with regard to prosecutions upon either of the foregoing Statutes, and for the Forms which may be readily made to serve, see respectively, Titles,—Information; Summons; Conviction.

As no final process or mode is pointed out by either of these Statutes, for enforcing the payment of any penalty adjudged against a party convicted, no such final process can be issued by a Justice, either against the goods or the body of such party.

LINES OF TOWNSHIPS, see,—TOWNSHIP LINES.

LORD'S DAY.

**Selling Goods,
&c.**

By the Statute 1 G. 3, c. 1. 1 V. 64, it is enacted, "In order that all persons may on the Lord's day apply themselves to duties of religion and piety, both publicly and privately, no tradesman, warehouse keeper, shopkeeper, or other person whatsoever, shall for the future open his, her, or their shop, or warehouse; or either by himself, or herself, or by his or her servant or servants, child or children, sell, expose, or offer to sale, upon any bulk, stall, or shed; or send or carry out any manner of goods or merchandize on the Lord's day, or any part thereof: Provided, nevertheless, that this Act shall not extend to prohibit any persons from selling or exposing

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to sale, milk and fresh fish, before the hour of nine o'clock in the morning, and after five o'clock in the afternoon, on the said day.

Sec. 2. No person whatsoever, shall do or exercise any labour, work, or business, of his or their ordinary callings or other worldly labour, or suffer the same to be done, by his or their servant or servants, child or children, either by land or by water, (works of necessity and charity only excepted,) or use, or suffer to be used, any sport, game, play or pastime, on the Lord's day, or any part thereof; upon pain that every person so offending in any of the particulars before mentioned, upon conviction thereof upon the oath of one credible witness, before any one of His Majesty's Justices of the Peace of this Province, or upon view of any Justice of the Peace; for every such offence shall forfeit and pay the sum of ten shillings.

Working or
using Sports,
&c.

Sec. 3. No tavern keeper, retailer of spirituous liquors, vintner, or other person keeping a public house of entertainment within this Province, shall, on any pretence whatsoever, entertain or suffer any of the inhabitants or town dwellers of Halifax, or any of the towns respectively where such tavern keepers, retailers of spirituous liquors, vintners, or other persons keeping public houses of entertainment, respectively dwell; or others not being strangers or lodgers in such houses, or such as come thither for necessary dieting and victualling only, to abide or remain in their dwelling-houses, out-houses, or yards, drinking, or idly spending their time on the Lord's day, but shall keep their doors shut during the time of divine service, on penalty of forfeiting and paying the sum of ten shillings for every person so found drinking or abiding in such public houses or dependencies thereof as aforesaid; and every such person who shall be found so drinking or abiding, in any such public house or dependencies thereof as aforesaid, shall respectively forfeit and pay the sum of five shillings.

Resorting to
Taverns, &c.

Sec. 4. The Churchwardens and the Constables, or any one or more of them, shall once in the forenoon, and once in the afternoon, in the time of divine service, walk through the town to observe and suppress all disorders, and apprehend all offenders whatsoever, contrary to the true intent and meaning of this Act. And they are hereby authorized and empowered to enter into any public house of entertainment, to search for any such offenders; and in case they are denied entrance, they are hereby empowered to break open, or cause to be broke open, any of the doors of the said house and enter therein; and all persons whatsoever are strictly required and commanded to be aiding and assisting to any constables or other officers in their execution of this Act, on the penalty of ten shillings for every neglect.

Attending Divine Service.

Sec. 5. If any person whatsoever, being of the age of twelve years or upwards, being able of body, and not otherwise necessarily prevented by real sickness, or other unavoidable necessity, shall for the space of three months together, absent himself or herself from the public worship on the Lord's day, shall be subject to a fine, that is to say, for every head of a family, ten shillings, and for every child or servant, five shillings; to be recovered upon complaint before any one Justice of the Peace, who is hereby empowered to cause the same to be levied.

Sec. 6. All fines and penalties incurred by this Act, are to be to the use of the poor of the town where such offence is committed; and the Justice and Justices before whom any person shall be convicted of offending against this Act, are required to make a record thereof in a book to be kept by him or them.

Sec. 7. Provided that no person shall be prosecuted for any offence before mentioned, unless they be prosecuted for the same within ten days after the offence committed.

Convictions for Offences.

Sec. 8. Every Justice of the Peace shall have full power and authority, either upon his own view, or other legal conviction of any offender or offenders against this Act or any part thereof, to levy the penalties, herein before respectively mentioned, in case the same shall not, upon such conviction, be paid by the offender or offenders, by distress, and sale of the offender or offender's goods and chattels, with costs; and in default of distress, to commit such offender or offenders to the common gaol of the county, there to remain in close confinement for a time not exceeding forty-eight hours, nor less than twenty four hours.

Sec. 9. This Act shall be publicly read four times in every year, viz.—At the opening of every Court of General Sessions of the Peace, immediately after the Grand Jury are sworn; and on every first Sunday in December, and every first Sunday in June, in all public places of worship within this Province, immediately after divine service. *Perpetual.*

It has been decided, that a person can commit but one offence on the same day, by exercising his ordinary calling on a Sunday. It is one entire offence, whether longer or shorter in point of duration, or consisting of one or a number of particular acts. 3 *Burn's*, 265.

Opening Shops, or Selling Goods, &c.

By 2 W. 4, c. 3, § 24. 4 V. 116. "No person holding a shop license, shall open his, her, or their shop or warehouse, or either by himself or herself, or by his or her servant or servants, child or children, sell, expose, or offer for sale, any manner of goods or merchandise whatsoever, [bread and milk

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excepted,] on the Lord's day, or on any part thereof; under the penalty of five pounds for every such offence, and of forfeiture of the license.

Sec. 25. If any tavern keeper, shop keeper, retailer of spirituous liquors, vintner, or other person keeping a public house of entertainment or shop within this Province, and licensed as aforesaid, shall entertain or suffer on the Lord's day, any of the inhabitants of Halifax, or of any of the towns respectively, where such tavern keepers, shop keepers, retailers of spirituous liquors, vintners, or other persons keeping public houses of entertainment, or shops, respectively dwell, or others not being strangers or lodgers in such houses, or such as come thither for necessary dieting and victualling only, to abide or remain in or about their dwelling houses or shops, drinking or idly spending their time, it shall and may be lawful for any one Justice of the Peace for the county, either on his own view, or on the information of one credible witness, to cause the person or persons so offending, to be apprehended and committed prisoner to the county gaol, unless such offender or offenders shall enter into a recognizance before such Justice, with one or more sufficient bondsmen, for his, her, or their appearance at the next General Sessions of the Peace, there to answer to such complaint, and in the mean time to be of good behaviour; and also to bind over the witness or witnesses to prosecute at such Sessions. *Perpetual.*

Resorting to
Taverns, &c.

By the Statute 31 G. 3, c. 3. 1 V. 284, "No person upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process, order, judgment or decree, (except in cases of treason, felony, or breach of the peace,) but the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person or persons so serving or executing the same shall be liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any process, warrant, order, judgment, or decree whatsoever." *Perpetual.*

Bail cannot take the defendant on a Sunday in order to surrender him; and it has been held that a warrant of commitment for a penalty cannot be executed on a Sunday, and that the apprehension on that day is wholly void, and the defendant is entitled to be discharged out of custody. 3 *Burn's*, 268.

Information for Working on the Lord's Day; contrary to the foregoing Statute, 1 G. 3, c. 1.

County of) THE Information of A. I., of — in the
) county aforesaid, yeoman, exhibited before me

A. M. Esquire, one of His Majesty's Justices of the Peace for the said county, the — day of —, in the year of our Lord one thousand eight hundred and —, who saith,

That A. O. of — in the county aforesaid, labourer, on the — day of — in the year aforesaid, being the Lord's Day, at — in the said county, did openly and publicly do and perform the worldly work and labour of cutting wood with an axe, [or as the case may be] contrary to the Statute in such case made and provided, the said work not being then and there a work of necessity or charity. And thereupon he the said A. I. prayeth that he the said A. O. may forfeit the sum of ten shillings, to the use of the poor of the said township of —, as by the said Statute is required.

A. I.

Before me,

A. M., J. P.

Summons thereupon.

County of) To A. C. one of the Constables of the town-
) ship of — in the said county.

[Seal.]

FORASMUCH as information hath been made before me, A. M., Esquire, one of His Majesty's Justices of the Peace for the said county of —, that A. O. of — in the said county, labourer, on the — day of — in the year of our Lord one thousand eight hundred and — being the Lord's Day, at the township of — aforesaid, in the said county, did openly and publicly do and perform the worldly work of cutting wood with an axe, [or as the case may be] contrary to the Statute in such case made: These are therefore to require you to summon the said A. O. to appear before me, at — in the said county, on — the — day of — in the year aforesaid, at — o'clock in the forenoon, to answer unto the said information, and to shew cause why he the said A. O. should not pay the penalty of ten shillings for the said offence; and be you then there to certify what you shall have done in the premises. Given under my hand and seal, the — day of — in the year aforesaid.

A. M., J. P.

If the information is for using a sport game, &c., or for any of the other offences mentioned in the Act, the information and summons must be filled up accordingly, stating the facts of the offence as nearly as may be in the words of the Act. For the Form of a Conviction, where the course is by information, see the general Form under the Title—Conviction.

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The general rules of law and evidence to be attended to, and the manner of proceeding on the hearing before the Justice, will be the same as in all similar cases for the recovery of penalties, and will be found set forth under the Titles—Information, Conviction, and other appropriate Titles of this Work.

If the Justice convicts on his own view, the mode of proceeding, and the Forms will be different. In this case, if circumstances will permit, the Justice should, at the time of viewing the work done, enquire and ascertain, whether it is a work of necessity or charity, or otherwise, so that he may determine on the case accordingly; and if he convict the party, he should inform him thereof, and of the penalty imposed. Should the Justice at the time of the view, not have it in his power to ascertain; or from the circumstances appearing or ascertained, should it seem doubtful whether the work is one of necessity or charity, or otherwise, he should defer an immediate conviction, and should summon the party in the usual manner to appear before him at a subsequent time, to shew cause, if he have any, why he should not be convicted of the offence; and in this case the same proceedings must be had as in all similar cases. Directions relating to such proceedings have already been given under the Title—Information, and other Titles of this Work. The following will serve as the form of such a summons to shew cause.

County of } To A. C., one of the Constables of the town-
ship of — in the said county.

[Seal.]

FORASMUCH as A. O. of — in the said county, labourer, on the — day of —, in the year of our Lord one thousand eight hundred and — being the Lord's Day, at —, in the said county did in the view of me A. M., Esquire, one of His Majesty's Justices of the Peace, openly and publicly do and perform the worldly work and labour of cutting wood with an axe, [or whatever else the case may be.] These are therefore to require you to summon the said A. O. to appear before me at —, in the township of —, in the said county, on — the — day of —, in the year aforesaid, to shew cause if any he have, why he should not be convicted of the said offence, and should not be compelled to pay the penalty of ten shillings imposed by the Statute in such case provided; and be you then there to certify what you shall have done in the premises. Given under my hand and seal the — day of — in the year aforesaid.

A. M., J. P.

In every case where the Justice convicts on his own view, the information is of course needless, and also a summons, except in the case just mentioned. In all cases of conviction on view, the Form may be thus :

County of } **BE** it Remembered, that on the — day of
 { —, in the year of our Lord one thousand eight
 hundred and —, being the Lord's day, commonly called
 Sunday, A. O. of — in the said county of —, labourer,
 did, in the view of me, A. M., Esquire, one of the Justices of
 our Lord the King assigned to keep the peace in and for the
 said county, and also to hear and determine divers felonies, tres-
 passes, and other misdemeanors, in the said county committed,
 do and perform the worldly work and labour of cutting wood with
 an axe, openly and publicly, at the township of —, in the
 said county, [or as the case may be] contrary to the Statute
 in such case made and provided, which said work was not then
 and there a work of necessity or charity : Whereupon it is
 considered and adjudged by me the said Justice, that the said
 A. O. be convicted, and he is accordingly by me hereby con-
 victed of the offence aforesaid, upon my own view as aforesaid,
 according to the form of the Statute in that case made and
 provided. And I do hereby adjudge, that the said A. O., for
 the said offence, hath forfeited the sum of ten shillings, to be
 paid and applied as the law directs. In witness whereof I the
 said Justice, have to this present conviction set my hand and
 seal, at — in the said county, on the — day of —, in
 the year of our Lord above written.

A. M., J. P.

[Seal.]

If the complaint is for using a sport, game, &c., or any other offence mentioned in the Act, the conviction must, of course, be filled up accordingly, stating the offence according to the facts.

*Warrant to levy the Penalty on a Conviction for Working,
 &c. on the Lord's Day.*

County of } **To** A. C., one of the Constables of the town-
 { ship of —, in the said county, and to the other
 Constables of the said township.

[Seal.]

FORASMUCH as A. O. of — in the said county of
 —, labourer, is duly convicted before me, A. M., Esquire,
 one of His Majesty's Justices of the Peace in and for the said

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county, for that he the said A. O. on the — day of — in the year of our Lord one thousand eight hundred and —, being the Lord's day, commonly called Sunday, did do and perform the worldly work and labour of cutting wood with an axe, [or as the case may be] openly and publicly, at the township of — in the said county, contrary to the Statute in such case made and provided; which said work was not then and there a work of necessity or charity; whereby he the said A. O. hath forfeited the sum of ten shillings; which sum he the said A. O. hath neglected to pay, and the same is not yet paid. These are therefore to command you, forthwith to levy the said sum of ten shillings, by distraining the goods and chattels of him the said A. O., and if within six days next after such distress by you taken, the said sum, together with reasonable charges for taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay the said sum of ten shillings to the Overseers of the poor for the said township of —, for the use of the poor of the said township, rendering to him the said A. O., the overplus upon demand; the necessary charges of taking, keeping, and selling the said distress, being first deducted. And if the said A. O. be not able to pay the said sum of ten shillings, and sufficient distress cannot be found whereon to levy the said sum, that you certify the same to me, together with the return of this warrant. Given under my hand and seal, at — in the said county, the — day of —, in the year above written.

A. M., J. P.

Certificate by the Constable of the want of Distress, to be indorsed on the Warrant.

County of } I A. C. one of the Constables of the township
of —, in the said county, do hereby certify this
— day of —, in the year one thousand eight hundred and —
unto — the Justice within mentioned, that I have made
diligent search for, but do not know of, nor can find any
goods or chattels of the within mentioned A. O. whereon to
levy the within sum of ten shillings.

Before me, the said Justice, A. C.

A. M., J. P.

Commitment thereupon to the common gaol.

County of } To A. D. one of the constables of the
 } township of — in the said county ; and to the
 [Seal.] keeper of the common gaol at —, in the said
 county.

WHEREAS A. O. of —, in the said county, labourer, was and is duly convicted before me, A. M., Esquire, one of his Majesty's Justices of the Peace for the said county, for that he the said A. O. on the — day of — in the year of our Lord one thousand eight hundred and —, being the Lord's Day, commonly called Sunday, did do and perform the worldly work and labour of cutting wood with an axe, [or as the case may be,] openly and publicly at the township of — in the said county, contrary to the Statute in such case made, which said work was not then and there a work of necessity or charity, whereby the said A. O. hath forfeited the sum of ten shillings, which sum the said A. O. hath neglected to pay, and the same is not yet paid or any part thereof : And whereas it duly appears to me by the return of A. C. one of the constables of the said township of —, that he hath made diligent search for, but doth not know of nor can find any goods or chattels of the said A. O. by distress and sale whereof the said sum of ten shillings may be levied, pursuant to my warrant duly made and issued for the levying the said sum of ten shillings by distress and sale of the goods and chattels of the said A. O. These are therefore to command you the said A. D. constable as aforesaid, to apprehend the said A. O. and convey him to the common gaol at —, in the said county, and deliver him there to the keeper of the said gaol : And these are also to command you, the said keeper of the said gaol, to receive him the said A. O. into the said gaol, and there detain him in close confinement without bail or mainprize, for the space of — hours ; and for so doing this shall be your sufficient warrant. Given under my hand and seal, at — aforesaid, the — day of —, in the year of our Lord one thousand eight hundred and —.

A. M., J. P.

NOTE. It will be seen by the Act, that the commitment must be for not more than 48, nor less than 24 hours.

The foregoing Forms of Warrant of Distress and Commitment, will serve where the conviction is for using a game, sport, &c., or for any other offence specified in the Act, only filling them up according to the conviction.

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LUMBER.

I. SURVEY OF LUMBER.

By the Statute of the 5 W. 4, c. 11. 4 V. 376, The following enactments and regulations are made. Sec. 1. " All ton timber which shall be exported from this Province, shall be straight lined and well squared, without offsets or joints, and square butted at both ends, and shall also be squared with not more than one inch of wane on the edges, and shall be free from all marks of scoring, rots, splits, or worm holes which may be detrimental to the same.

Sec. 2. No spruce or pine timber shall be less than sixteen feet in length, nor any birch or other hardwood ton timber, less than ten feet in length; nor shall any ton timber be considered merchantable unless the same shall square at least ten inches; and where the timber does not exceed sixteen feet in length, it shall be of equal bigness at both ends.

Sec. 3. Surveyors of lumber shall be entitled to receive three-pence per ton for surveying ton timber, with four-pence per mile for every mile they shall necessarily travel in coming to the place for performing such duty, and shall in all cases measure ton timber by the girth, one quarter part of the girth to be taken as the side of the square.

Sec. 4. Every Surveyor of lumber, before attempting to act as such, shall take and subscribe the following oath, before any one Justice of the Peace who is hereby authorised and required to administer the same without fee, that is to say : " I do solemnly swear that I will faithfully, impartially, truly, and to the best of my skill, knowledge and ability, execute, do, and perform the office and duty of a Surveyor of Lumber, according to the true intent and meaning of an Act entitled, An Act to regulate the survey of timber and lumber, and to repeal certain Acts now in force, and that I will give a true and faithful account of the number, dimensions, and measurement of all such timber or lumber as may be submitted to my inspection and judgment, according to the best of my knowledge, and that I will not at any time, wilfully change any article of lumber that may be entrusted to me for the purpose of being so surveyed,"—which oath every such person shall deliver to the Clerk of the Peace for the county or district in which he shall be appointed, together with the private mark which he shall adopt; and the said clerk shall grant a certificate to every such person of his having taken and subscribed the said oath, and the said persons shall thereafter continue in such

office until the annual appointment of Town Officers, and it shall be lawful for such Surveyors to survey timber or lumber in any part of the county or district in which they are appointed.

Sec. 5. All Surveyors of lumber shall personally and diligently examine and survey all ton timber and lumber of every kind and description when called upon so to do, and see that the same is and shall be in all respects conformable to the several provisions and directions of this Act, and shall reject any timber or lumber which shall in any respect be contrary to, or objectionable under this Act, (of which each Surveyor shall provide himself with a copy,) and shall refuse to pass the same; and after rejecting and refusing such objectionable timber or lumber, the said Surveyor shall furnish the buyer and seller, each with a true and faithful account in writing of the number, dimensions, and measurement of the articles he shall have so surveyed and find to be merchantable, and every such account duly certified under the hand of the Surveyor, shall be final and conclusive between the buyer and seller—provided, that if any dispute shall arise between the buyer and seller of any article of timber or lumber, the person dissatisfied may call upon three skilful and disinterested persons, being Surveyors of lumber regularly appointed and sworn, who shall re-survey and examine the said timber or lumber; and their determination, or that of any two of them shall be conclusive; and if the opinion of the first Surveyor shall be confirmed, then the buyer is to pay the expense of the second survey, but if the same be not confirmed, the expense of such second survey shall be paid by the first Surveyor.

Sec. 6. All dimension-deals shall be cut to the lengths of twelve, fourteen, sixteen, eighteen, twenty, and twenty-one feet, and of the breadth of nine, eleven, and twelve inches, to the thickness of three inches each, having an allowance of one inch and not exceeding two inches on the length, of one fourth of an inch and not exceeding one half of an inch on the breadth, of one eighth of an inch and not exceeding one fourth of an inch on the thickness, to be sawed smooth and fair, of equal width and thickness at both ends, to be butted at both ends with a saw, and the stubshot to be sawn off; to be free from rots, sap-stains, large knots, rents, shakes, worm-holes, wane, and augur holes."

Sec. 7. All plank intended for exportation out of this Province, except hard wood plank, shall be sawed at least three inches and one eighth of an inch in thickness, at least nine inches in width, and at least ten feet and not over twenty feet in length, and shall be in all other respects the same as is herein before prescribed and directed with respect to dimension deals."

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Sec. 8. All merchantable boards, plank, and scantling, except what is commonly called hard wood, shall be square edged with the saw. All clear boards shall not be less than one inch thick, and merchantable boards not less than seven eighths of an inch thick; no board or plank shall be deemed merchantable if split at both ends, or have one continued split of more than two feet at any one end, nor shall any board be deemed merchantable which is less than twelve feet in length, and nine inches in width, and which is not sawed of equal thickness throughout; or which is not free from rots, sap-stains, large knots, rents, shakes, worm-holes, wane, and augur holes.

Sec. 10. All lath-wood shall be of fresh growth, straight rift, free from bark, hearts and knots, to be measured by the cord of four feet high, and eight feet long, and piled as close as it can be laid; all pine shingles shall be eighteen inches long, not less than four inches wide, and three eighths of an inch thick at the butt, free from sap and worm holes, to be put up in bundles not less than twenty-five feet tier, or courses to twenty inches wide; four of which bundles shall be reckoned a thousand: shipping shingles for exportation shall be half an inch thick at the butt; the said thickness to be continued three fourths of the length and shaved from thence to the point, and shall also be from four to four and one half inches wide throughout; and that the account shall be taken by the tale of ten hundred to the thousand, and all pine shingles manufactured in the same manner shall be subject to the like rules and regulations.

Sec. 11. All hogshead staves shall be forty two inches long, three fourths of an inch thick on the thinnest edge, and not exceeding one inch on the back; and shall also be from three and one half inches to five and one half inches wide; and all barrel staves shall be thirty two inches long, one half inch thick on the thinnest edge, and not exceeding three fourths of an inch thick on the back; the whole to be of good rift, free of twists, fairly split, and free from knot-holes, rotten knots, worm-holes, and shakes, and the account shall be taken by the tale of twelve hundred to the thousand.

Sec. 12. If any Surveyor of lumber shall certify as merchantable for exportation, any ton timber or any article of lumber, contrary to any or either of the provisions of this Act, he shall forfeit and pay for each and every offence a sum not less than two pounds, nor more than five pounds.

Sec. 13. If any person shall ship or export out of this Province as merchantable, any ton timber, or any article or description of lumber herein mentioned and directed to be sur-

veyed, which shall not have been regularly surveyed by a sworn surveyor, and by him certified as merchantable and fit for exportation, he or they shall forfeit and pay for each and every offence, the sum of ten pounds.

Sec. 14. When any contract or bargain shall be made for any quantity of timber or lumber of any description herein before mentioned for exportation, the same shall be understood to be for timber or lumber according to the directions and provisions of this Act, and no person shall be obliged to receive any other kind of timber or lumber, unless such person shall have previously made a special agreement in writing for the same, specifying particularly, the nature, dimensions, and description of timber or lumber agreed to be received.

Sec's. 15 & 16. Every surveyor of lumber shall at the time of making a survey, mark on every stick of ton timber by him surveyed, the exact number of cubic feet such stick shall contain, together with the initial letters of his own name, and that of the private mark of the purchaser; and on all deals and plank the surveyor shall mark with lead on the end, the length, breadth, thickness, and superficial contents thereof respectively, and also the Surveyor's private mark; and all boards such Surveyor shall mark with the superficial contents thereof respectively, and with the said Surveyor's private mark. And if any person shall cut, deface, or otherwise destroy any mark so to be made on any stick of ton timber, or upon any deals, planks, or boards thereof, every such person so offending shall forfeit and pay for every such offence a sum not exceeding twenty shillings, nor less than ten shillings.

Sec. 17. Every Surveyor of lumber shall be entitled to demand and receive for his labour and trouble in surveying the several articles following, the sums herein after mentioned, that is to say, for surveying and measuring all deals, planks, scantling, and boards, nine pence, for every thousand superficial feet thereof, and the further sum of three pence for every thousand superficial feet for marking the same; and for all lath-wood, six pence per cord; and for all shingles three pence per thousand; and for all hogshead staves, one shilling and six pence for every thousand thereof, according to the sale thereof respectively, which rates for the survey of merchantable lumber, as well as those herein before prescribed for surveying merchantable timber, shall be paid by the seller, who shall employ or have the choice of the Surveyor, and the seller shall remove or cause to be removed at his own expense, whatever may obstruct or prevent the Surveyor from ascertaining with facility the measurement, manufacture, or quality of any article

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surveyed, shall be required to pay for the expense of survey,
unless such purchaser shall require a new survey thereof, or
shall have made a special agreement for the payment of such
expense.

Sec. 18. The surveyor shall mark all timber and articles
which do not correspond with the provisions of this Act, as
refuse ; and for such survey and marking shall be entitled to
the same fees as he is by this Act entitled to for surveying
and marking merchantable articles.

Sec. 19. All fines and forfeitures hereby imposed shall be
recovered with costs of suit before any two Justices of the Peace
of the county or district where the offence was committed, at
the suit of any person who will sue for the same, in the same
manner and by the same means as if the same were private
debts ; and shall be paid and applied, one half to the use of
the poor of the town or place where such offence was commit-
ted, and the other half to the person who will sue for the same.

Sec. 20. All prosecutions under this Act shall be com-
menced within twelve months after the time the offence was
committed. *Temporary Act.*

As the Act directs that all fines thereby imposed shall be
recovered in the same manner as private debts, the requisite
directions and Forms in suits for the recovery of such fines,
will be found under the Title—Summary Trials.

All previous Acts regulating the qualities and survey of
the several articles of timber and lumber mentioned in the fore-
going Act, are by the said Act repealed,—some expressly and
others virtually.

II. BRINGING LUMBER, &c. DOWN RIVERS.

By the Statute of the 58 G. 3, c. 31, 3 V. 35 made per-
petual by the 1 & 2 G. 4, c. 10, it is enacted " That logs and
lumber of any kind may be brought down the fresh water ri-
vers at such times of the year as the Justices in their Sessions
may appoint, doing as little damage as possible to the owners
of adjoining lands ; and that persons engaged in the timber and
lumber trade may remove obstructions in such rivers, at such
times as shall be most convenient under the regulations estab-
lished by the General or Special Sessions. Provided, that no
mill dam may be removed, and the General or Special Sessions
may make such rules and regulations as may be necessary res-
pecting the bringing lumber and other articles down rivers, and

may impose a penalty for breach thereof of not less than five shillings, nor more than two pounds ; to be recovered in any court of record, one half thereof to the person who shall sue for the same, and the other half for the repair of roads and bridges in the county." *Temporary.*

LUNATICS.

By the 14 & 15 G. 3, c. 5. 1 V. 187, Where persons, by lunacy or otherwise, are furiously mad, and dangerous to be permitted to go abroad, it shall be lawful for two Justices where such lunatic is found, by warrant directed to the constables, church wardens and overseers of the poor of the township or place, to cause such person to be apprehended and kept safely locked up in some secure place within the county, as such Justices direct ; and if such Justices find it necessary, to be there chained, if the last legal settlement of such person be in any place within such county ; and if such settlement be not there, such person shall be sent to the place of his last legal settlement by a pass, and shall be locked up and chained, by warrant of two Justices of the county to which such person is to be sent ; and the charges of removing, maintaining, and curing such person during such restraint, (which shall be for such time only as such madness continues,) shall be paid, being first proved upon oath, by order of two Justices, directing the church wardens or overseers of the poor where any goods, lands, or tenements of such person be, to seize and sell so much of the goods, or receive so much of the rents of the lands as is necessary to pay the same ; and to account for what is so seized, sold, or received, to the next Sessions of the Peace ; but if such person hath not an estate to pay the same, over and above what is sufficient to maintain his or her family, then such charge shall be paid by the township or place to which such person belongs, by order of two Justices, directed to the church wardens or overseers. Provided, that nothing herein contained shall extend to abridge the prerogative of his Majesty, or of the Chancellor, concerning such lunatics, or restrain any friend or relation of such lunatics from taking them under their own care." *Perpetual.*

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Warrant to Secure a Lunatic.

County of } To the Constables of the township of —, }
 } the churchwardens of the Parish of —, and the }
 } Overseers of the Poor of the said township of — }
 [Seal.] in the said county of —

[Seal.]

Whereas it hath been proved before us A. M. and A. R. Esquires, two of His Majesty's Justices of the Peace in and for the said county, upon the oaths of A. W. and B. W. both of the township of — in the county aforesaid, yeomen, that A. L. late of —, in the county of —, yeoman, frequently goeth at large in the said township of —, and that he the said A. L. is by lunacy so far disordered in his senses, that he is dangerous to be permitted to go abroad; and that his last legal settlement is in the township of — in the said county of —. These are therefore to authorize and require you, and every of you, to cause the said A. L. to be apprehended and kept safely locked up in the house of A. K. at —, in the said county, the said A. K. being willing to keep and entertain him the said A. L. for a reasonable allowance in that behalf, and the said house being a secure place: And the said A. L. is to be kept locked up only so long as such lunacy or disorder shall continue, and no longer. Given under our hands and seals, at —, in the said county, this — day of —, in the year of our Lord one thousand eight hundred and

A. M., J. P.

A. R., J. P.

Order to charge a Lunatic's Estate with his Keeping, Maintenance and Cure.

County of } To the Churchwardens of the Parish of —, }
 } and the Overseers of the Poor of the township of }
 [Seal.] —, in the said county of }
 [Seal.]

Whereas A. L. late of —, in the said county, yeoman, being a person lunatic, and so far disordered in his senses, that he was and is dangerous to be permitted to go abroad, hath by warrant under the hands and seals of us A. M. and A. R. Esquires, two of His Majesty's Justices of the Peace in and for the said county, been apprehended and safely locked up in the house of A. K. at —, in the said County, the said house being a secure place for that purpose; and whereas it appears to us on the oaths of C. W. one of the church wardens of the said parish of —, and O. P. one of the Overseers of the poor of the township of — in the said county, that they the

said church wardens and overseers have reasonably expended the sum of —, in removing the said A. L. to the said house of the said A. K. and in keeping, maintaining, and curing him there ; These are therefore to authorise and command you to seize and sell so much of the goods and chattels, and to receive so much of the annual rents of the lands and tenements of him the said A. L. within your said parish and township, as shall be necessary to pay the same ; and for what shall be so seized, sold, or received by you, you are to account at the next General Sessions of the peace to be holden for the said county. Given under our hands and seals, at — in the said county, the — day of — in the year of our Lord one thousand eight hundred and —.

A. M., J. P.
A. R., J. P.

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MADNESS, see,—DOGS, also,—LUNATICS.

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MAIM.

MAIM, is such a hurt of any part of a man's body, whereby he is rendered less able in fighting, either to defend himself, or annoy his adversary. The cutting off, or disabling, or weakening a man's hand, or finger, or striking out his eye or fore tooth, or castrating him, are said to be maims : but the cutting off his ear or nose were not esteemed maims at the common law, because they do not weaken but only disfigure him. 3 *Burns*, 296.

But by the English Statute of the 22 & 23, Ch. 2, c. 1, Sec. 7, The lying in wait, and maliciously maiming or disfiguring any person, is made a capital felony, and this clause has been re-enacted in this Province, by the 32 Geo. 2, c. 13, Sec. 2. 1 V. 15. by which it is declared,—“ That if any person shall on purpose and of malice forethought, and by lying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut of a nose or lip, or cut off or disable any limb or member of any person, with intention to kill, or to maim or disfigure any such person ; the persons so offending, their counsellors, aiders and abettors, privy to the offence, shall be felons without benefit of clergy. Provided, that no attainder of such felony shall work corruption of blood, or forfeiture of dower, lands or goods of the offender.” *Perpetual*.

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It is not necessary that the malicious intention should be conceived against any particular individual. If it be against all persons who may happen to come within the scope of the perpetrator's design, the particular mischief done to any one, will be connected with the general malignant intent, and so the case will fall within the Statute. With regard to the lying in wait, there must be proof of a deliberate and premeditated design to do a personal injury of the sort described, to another ; and it must appear that the mischief was done in the manner described therein ; that is, on purpose, and of malice aforethought, and by lying in wait for that purpose. And to bring the case within the Act, there must also be an intention (to be collected from circumstances) to maim or disfigure : for if the intent be of a different and less atrocious kind, it is not within the Act, though the party be in fact maimed.

Malicious Intention.

If the maim come not within any of the descriptions in the Act, yet it is indictable at the common law, and may be punished by fine and imprisonment ; or the party injured may bring an action of trespass, in which he shall recover damages.

Maim at common law.

It is not every trifling assault that will justify an immediate and grievous maim, such as cutting off a leg or hand, or biting off a joint of a man's finger, unless it happened accidentally, without any cruel and malignant intention, or after the blood was heated in the scuffle ; but it must appear that the assault was in some degree proportionable to the maim. 3 Burns, 297-9.

Justification of Maim.

As a maim under the before mentioned Act, is thereby made a capital felony, the same proceedings must be had, and the same Forms will serve on Informations for this offence as in other felonies ; as to which proceedings and Forms, see respectively, Titles,—Information ; Warrant ; Examination ; Commitment. Justices of the Peace cannot bail for a maim under the Act.

Directions.

MALICIOUS INJURIES.

I. TO CATTLE.

By the 4 & 5 G. 4, c. 4. 3 V. 181, " If any person shall maliciously, unlawfully, and willingly, kill, maim, wound, or otherwise hurt, any horse, mare, gelding, ox, bull, cow, steer, heifer, sheep, or other cattle ; every such offender or offenders, shall forfeit and pay unto the party aggrieved, treble the damage which he shall sustain ; to be recovered by action of trespass, or upon the case, in any Court of Record."

Sec. 2. Any person who shall be duly convicted of such offence, in the Supreme Court, or General or Quarter Sessions, shall suffer such punishment by imprisonment or public whipping, as such Court shall in their discretion adjudge. Provided that nothing herein contained shall subject any person to be punished or imprisoned under the directions of this clause, who shall be proceeded against for damages by the party aggrieved; nor shall any person who shall have been punished or imprisoned under the directions of this clause, be liable to any suit or action at the instance of the party aggrieved; but such punishment or imprisonment shall be for ever a bar to any such action or suit." *Perpetual.*

NOTE. This Act repeals a former Act of the 8 G. 3, c. 2. on the same subject.

II. TO REAL OR PERSONAL PROPERTY.

By the 2 W. 4, c. 48. 4. V. 167, If any person shall wilfully and maliciously destroy, or commit any damage, injury or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment (other than a civil suit or action) is provided, or can be inflicted by the Laws or Statutes of this Province, or in force therein, every such person shall be guilty of a misdemeanor, and being duly convicted thereof in His Majesty's Supreme Court, or before any General or Quarter Sessions, shall forfeit and pay such fine or penalty, not exceeding twenty pounds, or shall suffer such punishment by imprisonment in the county gaol, or bridewell, or house of correction at Halifax, for such space of time not exceeding two years, or by fine and imprisonment as aforesaid, as such Court shall in their discretion adjudge.

Sec. 2. All fines levied and received under the Act, shall in case of injury to private property, be paid to the party aggrieved, (if known) except where such party shall have been examined in proof of the offence; and in such case, or where any public right or property is concerned, such fines shall be paid to the king.

Sec. 3. Nothing herein contained shall extend to any case, where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of; nor to any trespass, not being wilful and malicious; but every such trespass shall be punishable in the same manner as before this Act.

Sec. 4. Every person who shall aid, abet, counsel, or

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procure the commission of any offence punishable under this Act, shall be liable to be indicted and punished as a principal offender.

5. Every punishment by this Act to be imposed or inflicted upon any person maliciously committing any offence, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise. *Temporary.*

On complaint being made to a Justice, of any of the offences mentioned in the Statutes recited under this Title, he must take the information in writing, in the usual manner and form, and issue his warrant for the arrest of the party charged, and on his being brought before him, examinations in writing need not be taken, as all the said offences are only misdemeanors; but the party must be required to produce sufficient bail, and if he does so, the Justice must, as in like cases, bind the party and his bail, for the appearance of the former at the next term of the Supreme Court, or of the Sessions, as the Justice may see proper, and may then discharge him from custody; but if he fails to furnish sufficient bail to the satisfaction of the Justice, he must be forthwith committed to jail, to await his trial. The Justice must also, as in similar cases, bind over the prosecutor and witnesses to appear at the court, and give evidence; and in due time must send into such court, the minutes of all the recognizances by him taken in the case. More particular directions, if needed, and the requisite Forms, which may readily be filled up so as to serve, will be found under the respective Titles,—Information; Warrant; Bail; Commitment.

Directions.

MARRIAGE.

By the 32 G. 2, c. 17. 1 V. 24. If any person, being married, do marry again, the former husband or wife being alive, such offence shall be felony. *Polygamy.* Provided nevertheless, that this shall not extend to any person, whose former marriage has been declared void, or who has obtained a divorce by any sentence had before the Governor and Council.

Sec. 8. Every man and woman who shall carnally know each other, being within the degrees of kindred forbidden in the English Statute, made in the thirty-second year of King Henry the Eighth, entitled "An Act concerning pre-contracts *Incest.*

and touching degrees of consanguinity ; and shall be convicted thereof, before His Majesty's Supreme Court, or General Quarter Sessions of the Peace, shall be set in the pillory for the space of one hour ; and further, shall forfeit the sum of fifty pounds, to the use of His Majesty's Government ; or suffer six months imprisonment.

Adultery.

Sec. 9. Every person who shall commit adultery, and shall be thereof convicted before any of His Majesty's Courts aforesaid, shall forfeit to the use aforesaid, the sum of fifty pounds, or suffer six months imprisonment, and to be subject nevertheless to an action of damages by any of the parties aggrieved. *Perpetual.*

Registry of
Marriages,
Births and
Deaths.

By the 1 G. 3, c. 4. 1 V. 67. It is provided, that in every township where no parish is established, the proprietors clerks shall take an account of all persons who shall be married, or that shall be born, or shall die in such townships, respectively, and shall fairly register in a book their names and surnames, as also the names and surnames of their parents, with the time of their being married ; or of their birth, or death ; and the Registrar shall receive the fee of six-pence for every such registry, to be paid by the persons who shall be married, and by the parents or nearest of kin to or concerned with the party born or dead. And if any shall refuse or neglect to give notice to the said Registrar, of the marriage by the persons themselves, or of the birth or death of any person that they are so related to or concerned for ; or to pay for registering as aforesaid, within the space of thirty days, next after such marriage, birth or death, every person so refusing or neglecting, and being (upon the complaint of any Registrar,) thereof convicted, before one Justice of the Peace of the same county, shall forfeit and pay to such Registrar the sum of five shillings, to be levied by distress and sale of the offender's goods, by Warrant from such Justice, if payment be not made within four days next after conviction as aforesaid. And every such Registrar shall give forth from the Registry, a fair certificate under his hand, of persons married, born, or dying in the township, to any who shall desire the same ; and he shall receive one shilling and no more, for every certificate so given. The Registry so kept shall be sufficient evidence in any Court of Record in this Province.

Town Clerks
to register
Marriages,
&c.

By the 22 G. 3, c. 3. 1 V. 226, made in amendment of the foregoing Act, it is enacted, " That the duty to be done by the proprietor's clerk of each township, as directed by the said foregoing Act, shall for the future be done by the Town Clerk of each township ; and the parties failing to comply with the directions of the said Act, shall be liable to the forfeiture

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and penalty therein set forth, and such party shall pay for recording each marriage, birth, or death, one shilling, instead of the fee directed to be paid by the said Act. And the said Town Clerks shall apply to the several ministers of such townships respectively, for a list of all such marriages, births, or deaths recorded by them, before the making of this Act, and from time to time hereafter, and shall enter the same in a book kept for that purpose." *Perpetual.*



MEASURES, see,—WEIGHTS, &c.



MILE POSTS, &c.

By the 30, G. 3, c. 3. 1 V. 278. "Whoever shall be guilty of defacing, displacing, injuring, or destroying any post board, or stone, erected or to be erected for the purpose of ascertaining distances, shall on conviction thereof, before any two Justices of the Peace, forfeit and pay the sum of two pounds; the one half whereof to be given to the prosecutor, and the other half paid in to the Treasurer of the County wherein such offence was committed, for the purpose of repairing and erecting mile boards within such County; and in case the party so convicted shall be unable to pay the fine imposed, it shall be lawful for such Justices to direct and order the offender a corporal punishment, not less than twenty lashes nor exceeding thirty lashes, to be inflicted at the most public place within the said district, in the usual and accustomed manner." *Perpetual.*

The proceedings and the Forms in prosecutions upon this statute, will be the same as in the great number of similar cases for the recovery of penalties already set forth in this work, and as will be found under the respective Titles,—Information; Summons; Conviction.



MILITIA.

By the following Statutes named under this Title, the several regulations and fines hereafter mentioned are established and imposed, which fines are directed to be recovered or levied under proceedings before Justices of the Peace. For the sake

of convenience, the several enactments which embrace such regulations and fines may be arranged under the several divisions which follow :—

I. ENROLMENT.

By the 1 & 2 G. 4, c. 2, Sec. 9. 3 V. 75. Every Militia man not already enrolled in the company within the limits of which he resides, who shall neglect to present himself in person to the Captain or officer commanding such company, and give in his name, age, and place of residence, or cause the same to be made known to such officer, shall forfeit and pay ten shillings ; and every militia man who shall remove out of the limits of the company in which he is, or ought to be enrolled, and shall not within ten days after his removal at the place of his new residence, or where he shall hire himself, either present himself for enrolment, or cause his name, age, and place of residence, with that from which he last removed, to be made known to the officer commanding the company of his new place of residence, shall pay a fine of ten shillings ; and every person who shall not within thirty days after he has attained the age of sixteen years, either present himself for enrolment, or cause his name, age, and place of residence to be made known as aforesaid, so that he may be enrolled as aforesaid, shall forfeit a fine of five shillings ; and every man within the ages herein before described, (between sixteen and sixty) who shall come to reside in the Province, and shall not within thirty days after his arrival therein, present himself for enrolment, or cause his name, age, and place of residence to be made known as aforesaid, so that he may be enrolled as aforesaid, shall pay a fine of ten shillings.

[By the 9 G. 4, c. 26 4 V. 37, Persons neglecting to enrol themselves, shall besides the fines for such neglect, be liable to the fines for non-attendance at trainings, in the same manner as if they had received notice to attend the same. See the Note at the end of Division, No. 12.]

II. ARMS.

[By the 1 & 2 G. 4, c. 2, Sec. 11 & 12. 3 V. 75, Every freeholder of twenty-one years of age, within twenty days after public notice that arms are provided by Government for the use of the company or battalion to which he belongs, shall furnish himself with sufficient arms of the kind required in the company to which he belongs, and shall appear with the same at every time when required to be on duty under arms, under

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the penalty of ten shillings. Every such freeholder shall be entitled to receive the arms he requires, from the arms provided by Government, on giving the requisite bond for their safe keeping and return ; and on neglecting to receive such arms and enter into the bond, or to provide himself with sufficient arms as aforesaid, he shall forfeit two pounds.

[Sec. 16. Officers commanding companies shall make lists of names of persons therein, who are not compellable to give security, or to provide themselves with arms, and shall receive government arms for such persons, and shall give two receipts for such arms, and be responsible for their safe keeping and return ; and every such officer who shall neglect to make such lists and give such receipts, shall forfeit five pounds, and on complaint may be deprived of his commission.]

[Sec. 19. Persons who shall vend, pledge, or exchange any arms received by them, or shall cause the same to be conveyed out of the limits of the Battalion to which they were issued, (except when on real service,) and persons who shall buy, receive, or accept the same in exchange, shall severally forfeit five pounds for each firelock, and ten shillings for each accoutrement so disposed of or received ; and persons who shall cause such arms or accoutrements to be put on board of any boat or vessel, with intent to have them carried out of the county, and the master of any boat or vessel who shall knowingly receive them on board, shall forfeit ten pounds, which fines may be recovered on the oath of one credible witness, before any one Justice of the county wherein the offence was committed ; and in case of non payment, such Justice shall by warrant cause the offender to be committed to gaol, for each fine of ten shillings, for four days, for each of five pounds, forty days ; and for each fine of ten pounds, for three months, unless such fine shall be sooner paid ; one fourth of all which fines shall be paid to the informer, and the residue be applied in making good deficiencies of arms, and in repairing the same.]

[Sec. 20. If information on oath is given to the Justice, that any such offender, (not being a freeholder) is about to leave the Province, or to remove out of the county with such arms or accoutrements, the Justice shall issue his Warrant to the deputy Sheriff, or any Constable, to apprehend and bring such offender before him, to answer the complaint.]

[Sec. 21. Persons charged with selling, purchasing, or receiving arms or accoutrements as aforesaid, who shall immediately cause the same to be delivered to the Justice, shall have a remission of one half of the fine, or imprisonment.]

[Sec. 23. Militia men, before removal out of the district of the company in which they are enrolled, shall deliver to the

commanding officer of such company, in good order, the arms and accoutrements they received, under the penalty of five pounds.]

[Sec. 25. If any militia man shall appear at any muster, with arms or accoutrements, which in the opinion of the officer commanding the company to which he belongs, are dirty and not in good and serviceable order, he shall forfeit and pay, not less than two shillings and six pence, nor more than ten shillings.]

[Sec. 26. If any militia man who has received arms or accoutrements as aforesaid, shall use them for fowling, or the like private purposes, he shall forfeit and pay five shillings for each offence.]

[By 4, G. 4, c. 4. 3 V. 148, Where a bond given by a militia man for arms, has been lost or misplaced, a receipt given by the commanding officer of the company, on the return of such arms, shall cancel the bond; and if such militia man shall refuse to deliver up the arms or accoutrements on such receipt being tendered to him, he shall forfeit five pounds.] See the note at the end of division No. 12.

III. TRAINING.

[By the 1 & 2, G. 4, c. 2, § 28. 3 V. 79, Officers commanding companies, having received orders to call out and discipline their companies, and neglecting so to do, shall forfeit five pounds for each such offence.]

[Sec. 31. All officers under the rank of Lieutenant Colonel, who shall fail to attend any meeting of the battalion or company to which they respectively belong, without reasonable excuse, to be adjudged by a Board of Officers appointed for hearing and determining appeals, shall forfeit, if a major, five pounds, if a captain, three pounds; and if a subaltern officer, two pounds; which fines shall be sued for by the adjutant of the battalion, and recovered in like manner as fines upon militia men for non attendance.]

[By the 7 G. 4, c. 16. 3 V. 261, Instead of the fines imposed by the 28th section of the aforesaid Act, of the 1 & 2 G. 4, c. 2, for non attendance at any battalion meeting, every militia man for such non attendance, shall for the first offence be subject to a fine of ten shillings, and for the second like offence in the same year, to a fine of twenty shillings; which fines shall be sued for and recovered, and be applied conformably to the said last mentioned Act, by the clerk of the company to which the offender belongs, but in the name of the commanding officer of such company, instead of such clerk; and the clerk shall be a competent witness upon such prosecution.

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[Sec. 6. Militia men while proceeding from home to attend trainings, and during the days they attend the same, and while returning therefrom, shall not be arrested on any civil process, and every such arrest shall be void, and the officer making it shall be liable to an action for damages at the suit of the party arrested.]

[By Sec. 29, of the aforesaid Act of the 1 & 2 G. 4, c. 2, 3. V. 80. Notice of the imposition of fines for non attendance at trainings, shall be given by the clerks of companies, either personally to the delinquent militia men, or in writing left with the master, parent, or wife, or with the child or servant, of the age of discretion.]

[Sec. 33. All fines on militia men for such non attendance, shall be recovered before any one Justice, not being an officer of the company to which the militia man belongs, which Justice shall have no power to remit any such fine, but on proof that the delinquent militia man had the notice before mentioned of the imposition of the fine, and that he had not been relieved on appeal, the Justice shall issue process for collecting the same, as in cases of debt.]

[Sec. 48. Any person wilfully interrupting militia at exercise, or on any duty, may be confined by the commanding officer during the time of such exercise or duty, (if necessary,) to prevent the continuance of such interruption, and the person so offending shall forfeit the sum of ten shillings.] See Note at the end of division No. 12.

IV. WATCHING AND WARDING.

[By the 1 & 2 G. 4, c. 2, § 36. 3 V. 81, Where militia guards shall be appointed for the purpose of watching and warding, every person, officers and others, neglecting by himself or sufficient substitute to perform his fair term of watching and warding, in manner and at the time directed by the commanding officer of his company, shall forfeit ten shillings for every such neglect.] See the Note at the end of Division No. 12.

V. REFUSING APPOINTMENTS.

By Sec. 43, of the last mentioned Act,—Every person appointed a sergeant, corporal, clerk, drummer or fifer, who shall refuse to accept such appointment, shall forfeit a fine of forty shillings; and every person having accepted any such appointment, and neglecting the duty thereof, shall forfeit forty shillings for each offence.

6. CLERKS OF COMPANIES AND BATTALIONS.

By Sec's. 44 and 45, of the said last mentioned Act, the duties of clerks of companies are declared to be—"To keep registers of their respective companies,—to furnish the non-commissioned officers with lists of the men whom they are directed to warn for training and other duties,—to take lists of the companies as often as required by the officers commanding them,—to attend commissioned officers making inspection of arms,—to attend all musters,—and to prosecute for all fines and penalties applicable to the use of their respective companies, when so ordered by the officers commanding such companies. And if any such clerk shall refuse or neglect to perform the said duties, he shall for each such neglect, forfeit a fine not exceeding five pounds, nor less than twenty shillings, to be prosecuted for, by the officer commanding the company.

Sec. 46. Officers commanding battalions shall appoint clerks for the same, who shall be subject to the same penalties as clerks of companies for any neglect of duty.

7. COMMITMENT FOR IMPROPER BEHAVIOUR.

By the Sec. 41, of the same last mentioned Act, "If any non-commissioned officer or private, shall be drunk, or misbehave himself at any training of a battalion or company, the commanding officer thereof, may by warrant under his hand and seal, forthwith commit such offender to the county gaol, for a time not exceeding three days, nor less than twelve hours, there to remain without bail; and on refusal of the sheriff or gaoler to receive such offender into his custody, he shall forfeit five pounds; and the serjeant or corporal, who, on being ordered by such commanding officer, shall refuse or neglect to escort such offender to gaol, shall be reduced to the ranks, and forfeit forty shillings; and every private who on being so ordered, shall neglect or refuse to do the same, shall forfeit ten shillings."

By 9 G. 4, c. 26. 4 V. 38, The foregoing provision is extended to all cases of employment in militia duty of any kind.] See the Note at the end of division No. 12.

8. CERTIFICATES OF SURGEONS, &c.

[By Sec. 49 of the same Act "Any physician or surgeon, on being required by a board of officers to certify or give his opinion as to the sickness or infirmity of any person

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enrolled in the militia of the county or district where he resides, shall forthwith give the same without fee, under the penalty of forty shillings for refusal thereof; and every physician or surgeon who shall give a certificate or opinion of the actual existence of any sickness, complaint, or disability, knowing that the same is false or pretended, shall forfeit a fine of ten pounds." See the Note at the end of division No. 12.

9. REPORTS OF OFFICERS.

[By the 4 G. 4, c. 4, 3 V. 147, When the officer commanding any company, shall accept from any man of the company, an excuse for non-attendance at any meeting, he shall, if required by the commanding officer of the battalion, report to him in writing, the nature of such excuse; and on neglect or refusal thereof, shall forfeit the sum of two pounds ten shillings.] See the Note at the end of division No. 12.

10. BOARDS OF OFFICERS.

[By Sec. 4 of the said last mentioned Act, "If any field officer or officer commanding a company, shall neglect to attend any board or meeting of officers, when ordered by the officer commanding the battalion to which he belongs, without reasonable excuse to be adjudged by a board of officers, he shall for each offence, forfeit the sum of two pounds ten shillings." See the Note at the end of division No. 12.

11. ACTUAL SERVICE.

[By the 1 & 2 G. 4, c. 2, § 64. 3 V. 90, "Whenever the commander in chief, or the officer commanding any battalion, or the officer commanding in any township, shall order any part of the militia into actual service, any non-commissioned officer or private, who shall neglect or refuse to obey such order, or shall not, by himself or sufficient substitute, proceed to perform such service as may be legally required of him, shall be confined by the commanding officer of the battalion or company to which he belongs, and shall be subject to a fine of ten pounds, to be recovered before any two Justices for the county wherein the offence was committed; to be levied of his goods and chattels, by warrant of distress, under the hands and seals of such Justices; or in default of such distress, to be liable to three months close imprisonment.]

[Sec. 85. If any person shall encourage, or endeavour to encourage, persuade, entice, or procure any non-commis-

sioned officer or private of the militia on actual service, to desert, or shall harbour, conceal, or assist any such deserter, knowing him to be such, it shall be lawful for the commanding officer of the battalion, company, or detachment to which such non-commissioned officer or private belongs, at his option to cause such person to be prosecuted in the Supreme Court, or before two Justices of the Peace. And if such prosecution shall be before two Justices, the person or persons who on the oath of one credible witness or more, shall be convicted by them of any of the said offences, shall severally forfeit and pay five pounds; and in default of such payment, the offender or offenders shall by such Justices be committed to gaol and closely confined for twenty days, or until he, she, or they, shall discharge the said penalty of five pounds, with the costs of prosecution.] See the Note at the end of division No. 12.

12. RECOVERY OF FINES.

[By the 9 G. 4, c. 26. 4 V. 38, No Justice of the Peace shall receive any fee or reward for any service done by him in that capacity, under the provisions of this Act, or any previous Acts hereby continued and amended.]

[Sec. 10. All fines and forfeitures under this Act, or any previous Acts hereby continued, not exceeding three pounds, shall be recovered before any one Justice; and all above three pounds, and not exceeding five pounds, shall be recovered before two Justices; none of the said Justices being an officer of the company in which the fine sued for was incurred; and all other fines and forfeitures, above five pounds, shall be recovered in any Court of record, unless the recovery of the same is otherwise provided for. Provided, that no person shall be prosecuted for the breach of any clause of this Act, or of any of the said Acts, after the expiration of three months from the commission of the offence.]

NOTE. All the before mentioned Acts concerning the militia, containing the several provisions and regulations herein before recited, were annually continued until the Session of the Legislature in the present year 1837, when by the Act of the 7 W. 4, c. 62, only the *first ten sections*, and the *forty-third, forty-fourth, forty-fifth, and forty-sixth sections* of the said first mentioned Act of the 1 & 2 G. 4, c. 2, were continued for one year. None of the other sections of this Act, nor any part of either of the other Acts herein before mentioned were so continued; and therefore these sections and Acts

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are to be considered as not in force at present. However, as it is probable they will be revived in the next, or some subsequent Session of the Legislature, and moreover, as they may, under certain circumstances, be at any time brought into operation by the Lieutenant Governor, agreeably to a clause in the said Act of the last Session, it has been thought best to set forth under this Title, the several foregoing enactments, *not now in force*; and accordingly they have been given, included within brackets. The preceding Sections, not so designated, are at present in full force.

By the aforesaid Act of the 7 W. 4, c. 62, the following enactments are made:

Sec. 1. The first ten sections, and also sections 43, 44, 45, and 46, of the Act of the 1 & 2 G. 4, c. 2, are continued until the thirty first day of March, in the year 1838.

Sec. 2. The militia shall not be called out, or required to attend any muster for drill, training, or discipline, during the continuance of this Act.

Sec. 3. On or before the last day of October in each year, every captain or officer commanding a company shall make out and transmit to the officer commanding the regiment to which such company belongs, a return of the strength of such company, with a fair roll thereof; and in like manner once in every year, on or before the last day of November, the commanding officer of every regiment or battalion shall make and transmit to the Adjutant General of Militia, a return of the strength of such regiment or battalion, with a return of the arms and accoutrements thereto belonging, and of the state and condition thereof; such returns to be made in the form prescribed by the Adjutant General; and any captain or officer commanding a company, neglecting to make such returns, shall forfeit and pay a fine of two pounds; and any officer commanding a regiment or battalion neglecting to make such returns, shall forfeit and pay a fine of five pounds.

Sec. 6. In case of war, invasion, or any sudden emergency which shall require the calling out of the militia, it shall be lawful for the Governor, or commander in chief for the time being, by proclamation, to revive and call into operation the Acts relating to the militia, which were continued by the Act of the last Session of the General Assembly until the thirty first day of March, in the year one thousand eight hundred and thirty seven, or such of the said Acts, or such parts thereof as shall be in the said proclamation designated; and thereupon, and thereafter, such Acts, or such parts thereof, shall come into and remain in operation, and this Act shall cease and determine until the end of the then next session of the General Assembly.

Sec. 7. All fines and penalties imposed by this Act, or by any of the sections of the said Act herein first mentioned, which are hereby continued, shall be recovered and recoverable, and be applied as is prescribed in and by the tenth clause of the Act passed in the ninth year of the reign of His late Majesty, entitled, "An Act to alter, continue, and amend the several Acts for the regulation of the Militia," in the same manner as if such tenth section had been hereby continued.

Sec. 9. This Act shall continue in force until the thirty first day of March in the year one thousand eight hundred and thirty eight.

Directions.

With regard to such of the before mentioned fines as are directed to be levied as in cases of debt, the writ of Execution for levying them, will be the same as in such cases, the Form of which Writ will be found under the Title,—Summary Trials. The proceedings for the recovery of the other fines, will be as in similar cases, set forth under various titles of this work ; directions as to which proceedings, with the requisite Forms, will be found under the respective Titles,—Information ; Summons ; Conviction ; Distress ; Commitment.

MILLS, see,—GRAIN.

MINES, see,—COALS.

MINORS, see,—INFANTS.

MISDEMEANOR.

THIS word in its usual acceptation is applied to all those crimes and offences for which the law has not provided a particular name ; and they may be punished according to the degrees of the offence, by fine or imprisonment, or both. This is the case with respect to acts of omission or commission, which were punishable at common law ; but many offences are by the statute law punishable as misdemeanors specifically. A misdemeanor is in truth any crime less than felony, and the word is generally used in contradistinction to felony ; and misdemeanors comprehend all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies, public nuisances, &c. 3 Burns 503.

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MURDER, see,—HOMICIDE.

NAVIGATION, see,—WRECK.

NAVY.

I. DESERTERS FROM THE NAVY.

By the 32 G. 2, c. 12. 1 V. 14, Any person who shall entice any seaman or marine to desert, or harbour, conceal, or assist any deserter from any ship of war, knowing him to be such, shall forfeit twenty pounds, on conviction, by one credible witness, or more, before any three Justices of the Peace, (*quorum unus*) for the use of Government; to be levied by distress, and for want of such distress the offender shall be committed to gaol, there to remain without bail for six months, or till such time as the said fine shall be paid.

Sec. 4. On information made on oath before any Justice of the Peace, by any officer of a ship of war, that one or more of the seamen in His Majesty's service have deserted or absconded, who there is reason to believe lie concealed in some dwelling or out-house where the said officer has been refused admittance, it shall be lawful for such Justice to issue his warrant to some one or more constables, empowering him or them in the day time to search for said deserters or absconders, in any dwelling or out house that shall be suspected for concealing them, accompanied by one officer only, either lieutenant or midshipman, and no seaman or marine with him; and in case any master or mistress of any such house shall refuse entrance to said constable or constables, they shall forfeit twenty pounds, upon conviction, to be levied by warrant of distress, under the hands and seals of two Justices of the Peace, from the offenders goods; and for want of such distress, such offender shall be committed to gaol for six months. And upon information on oath as aforesaid, it shall be lawful for any such Justice, and he is hereby required in the night time, in his own person, attended with the constables, accompanied by one officer either lieutenant or midshipman, and no seaman or marine with him, to demand entrance into any dwelling house or out-house, on suspicion of deserters or absconders being concealed there; and the master or mistress refusing entrance to such Justice so demanding it, shall forfeit twenty pounds, to be levied as aforesaid upon conviction, and for want of such distress, shall be committed to gaol for six months; the afore-

said sums to be for the uses of this Government. And the person or persons apprehended, supposed to be such deserters or absconders, shall be committed to gaol until proof is made before one Justice or more, of his or their desertion or absconding, and then shall be delivered up to the officer or officers of the Navy, who shall make demand of him or them. And in case any such person so committed, is not a deserter or absconder, or shall not be in His Majesty's service, he shall be discharged without cost. *Perpetual.*

II. SELLING OR RECEIVING SLOP CLOTHES.

By the aforesaid Act, Sec. 2, "If any person shall buy or receive as a pledge, or exchange any slop clothes from any seaman or marine belonging to any of His Majesty's ships of war, upon conviction thereof, or confession, or by the oath of one credible witness, or if such clothes shall be found in the possession of any person, upon complaint that they were bought from, or pledged, or exchanged by such seamen or marines; in such case the party offending shall pay a fine of five pounds; forty shillings of which to the informer, and three pounds to the use of His Majesty's Government; and the clothes shall be taken from such person and returned to such seaman or marine; and such person shall be utterly debarred from recovering the purchase or loan money for the same. Any person offending may be convicted before any one or more of His Majesty's Justices of the Peace, who shall levy the penalty by distress; and in default of distress, shall commit the offender to gaol, there to remain without bail for two months, or until such penalty shall be paid.

Sec. 3. It shall be lawful for any person upon seeing or knowing of any seaman or marine belonging to the navy, selling or exposing to sale any of his clothing or slops, to apprehend him and carry him immediately to some Justice of the Peace of the county, who shall commit him to gaol, and deliver him over to the captain or other officer of the ship to which he belongs."—This Act is made perpetual by the Act of the 34 G. 2, c. 1. 1 V. 56.

For the Forms, which may be filled up so as to serve for an information, and for a warrant thereon, to search for a deserter from the navy, see Title,—Deserters; and for directions as to other proceedings under the provisions of the aforesaid Statute, and for the other Forms requisite, see the general directions and the common Forms in similar cases, given under the respective Titles,—Information; Summons; Conviction; Distress; Commitment.

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NETS, *see*,—FISHERIES.

NUISANCE.
I. AT COMMON LAW.

A COMMON NUISANCE seems to be an offence against the public, either by doing a thing which tends to the annoyance of all the King's subjects, or by neglecting to do a thing which the common good requires ; and the remedy for this offence is by indictment or presentment at the suit of the King. Annoyances to the prejudice of particular persons are not punishable by a public prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them ; as,—stopping a prospect ;—building a house in a larger manner than it was before, so that the street becomes dark ;—or erecting a shed so near a man's house, that it stops up his lights,—are not public nuisances. The following have been held to be cases of public nuisance :—common bawdy houses, common stages for rope dancers, and all common gaming houses. Also, a gate erected in a highway where none had been before ; so a wall erected across a highway ; and every other unauthorized obstruction of a highway, to the annoyance of the King's subjects. However, in the case of repairing a house, the public must submit to the inconvenience necessarily occasioned thereby, but if this inconvenience is prolonged for an unreasonable time, the public have a right to complain, and the party may be indicted for a nuisance. A mastiff going in the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to His Majesty's subjects, seems to be a common nuisance, and consequently the owner may be indicted for suffering him to go at large.

No length of time will legitimate a nuisance. It seems to be certain, that any one may pull down or otherwise destroy a common nuisance, as a new gate, or even a new house erected in a highway, or the like. But although he may remove the nuisance, yet he cannot remove the materials, or convert them to his own use. So much of the thing only as causes the nuisance ought to be removed. 3 *Burns*, 519 to 524.

II. BY STATUTES.**1. Nuisances in Rivers.**

By the 26 G. 3, c. 7. 1 V. 247, made perpetual by the

48 G. 3, c. 18. 2 V. 21, It is enacted,—that all mill-dams or other obstructions across rivers to which fish resort, shall have a waste gate or slope for the admission of fish ; and if not so constructed, upon complaint made to the General Sessions, the Justices thereof, upon the report of a jury, under a precept to the Sheriff, may order the owner of such mill-dam or other obstruction, to form such waste-gate or slope, and to pay a fine not exceeding fifty pounds nor less than ten pounds ; and if the said fine with the charges of prosecution are not paid, the same shall be levied on the goods and chattels of the offender, by warrant of distress ; and if no distress can be found, the offender shall be imprisoned for three months, or until the fine and charges are paid, If the party convicted do not obey such order of the General Sessions, a Special Session of three or more Justices may be held, and shall issue a precept to the Sheriff, to prostrate such nuisance ; and all persons when required by the Sheriff, shall assist in so doing. When it appears by the return of the Jury that persons have complained without sufficient cause, they shall be adjudged to pay costs to the said owner. Justices in their first General Sessions shall distinguish such rivers or streams as they deem useful for the supplying of timber, fire wood, saw mill logs and boards ; and shall make an order that all persons thereafter making a mill-dam or other obstruction on such rivers or streams, shall form a waste gate or slope ; and such Justices shall cause copies of such order to be posted up, and if any person shall act contrary thereto, he shall be liable to be proceeded against, in the same manner as herein before mentioned ; and any mill dam or other obstruction not so made, shall be prostrated as in the case aforesaid. *Perpetual.*

NOTE. As the proceedings under this Statute are to take place in the Sessions, it is thought unnecessary to recite in full the several clauses relating to the foregoing regulations. With regard to the Statutes and the proceedings in cases where prosecutions are to be had before Justices, for nuisances in rivers, by obstructing the passage of fish, see Title,—Fisheries.

2. Nuisances concerning Health.

Making Reg-
ulations con-
cerning Nui-
sances.

By the 3 W. 4, c. 40. 4 V. 218, The General or Special Sessions, when at least five Justices are attending therein, shall make and publish such rules and regulations as they may deem expedient, for the prevention and removal of nuisances in streets and elsewhere, whereby the public health may be

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affected ; and for cleaning and purifying streets and other places, and cleansing wells and reservoirs of water ; and may impose penalties not exceeding five pounds, nor less than ten shillings, for the violation of such rules and regulations ; and, if considered expedient, may appoint inspectors for carrying the same into effect, and for preventing nuisances, and preserving cleanliness.

Sec. 4. It shall be lawful for any one Justice, upon his own view, or the oath of one credible witness, to make an order in writing for the removal, burial, or destruction, as he may think necessary, of any animal body, decayed fish, or other offensive substances occasioning nuisances in or near, or encumbering the highways, wharves, or places in any town or settlement, or being in any boat or vessel ; and also to order the same to be done by the party or parties by whom or whose directions such nuisances have been occasioned, or by any other person whom the said Justice shall appoint for the purpose ; and all expenses thereby incurred, shall be borne and be paid by and recovered against the party or parties occasioning such nuisance, or otherwise in such manner as by the said rules and regulations shall have been provided.

Sec. 5. The Inspectors aforesaid may enter into and examine, in the day time, at such times as they shall think fit, as well all vessels and boats lying at or near to, as all buildings, lots, yards, wharves, and places of every description in any town or settlement wherein they may have reason to believe that any offensive substances injurious to the health of the inhabitants are or may be deposited, and to ascertain and report to the Police Office in such town, if any, or to any two Justices of the Peace, the condition of such vessels, boats, and places aforesaid, so far as the public health may be affected thereby ; and to give all such directions, and enforce all such measures as in the judgment of such Inspectors, or by the order of such Justices may be necessary for the cleansing and purifying all such vessels, boats, and places aforesaid ; and to cause to be done every thing in relation thereto which in their opinion may be necessary to preserve the health of the inhabitants.

Sec. 6. Every penalty by any such orders or regulations imposed for offences against the same, shall and may be sued for and recovered by any such Inspector or Inspectors appointed for the place where the offence shall be committed ; or if there be no Inspector, then by any person who shall sue for the same before any two Justices of the Peace of the county or district, and in the same manner as if the same penalty were a debt due to the prosecutor ; and upon conviction of the offender by the oath of one credible witness, the amount of the

Removal of Nuisances.

Inspecting and Examining as to Nuisances.

Prosecutions for Penalties.

penalty, with costs of suit, shall be adjudged against him, and execution therefor shall be awarded and issued as in case of debts recovered before Magistrates.

Charges of
Removing
Nuisances.

Sec. 7. All charges or expences not exceeding ten pounds, incurred by the said Inspectors, or by any other person, under the order of a Magistrate for the removal, burial or destruction of any such substances as aforesaid, may be sued for and recovered from the party liable thereto, in the same manner as is provided for the recovery of the penalties aforesaid; and if the said charges and expenses shall not be so recovered, then the amount thereof may be presented and assessed as other county charges. *Perpetual.*

Appointing
Health In-
spectors.

By the 5 W. 4, c. 17. 4 V. 396, The Justices in General or Special Sessions in the several counties and districts, are required to appoint Health Inspectors, to act within certain described limits, and for certain times to be specified.

Special Court.

Sec. 3. Boards of Health, or where there are none, Health Wardens, or in places where neither are in office, the General Sessions, or any three Justices in Special Sessions, the President of Sessions being one, in the place where he resides, shall form the Special Court contemplated and mentioned in this Act, and all orders by such Court, concerning nuisances, or the removal thereof, or of persons, shall be forthwith executed, notwithstanding any appeal therefrom.

Powers and
Duties of
Health In-
spectors.

Sec's. 4 & 5. Subject to the control of such Special Court in all things relating to public health, and as to streets, sewers, and drains, under the control of the commissioners of streets where there are any, such Health Inspectors shall have the charge and care of streets, passages, wharves, docks, sewers, drains, vaults, privies, markets, and whatever else may injuriously affect the health, or comfort of the inhabitants, with power to remove or destroy nuisances, and to execute all orders and regulations of the said Special Court, and also of the Sessions under the before mentioned Act concerning nuisances, and shall have the same powers, and perform the same duties as belong to health wardens under the ninth and tenth Sections of the "Act to provide against the introduction of infectious diseases;" and the said Inspectors shall put this present Act into execution to the utmost of their power, and shall be paid for their services an adequate compensation, which shall be assessed and collected in the same manner as other town charges.

Examining
Drains, Docks,
and other places.

Sec. 9. It shall be the duty of every such Health Inspector, as often as he shall be required by such Special Court, or by any regulations made as aforesaid, or by any health wardens, or Justice of the Peace, or whenever such Inspector shall see cause therefor, to open and examine, by himself or

his workmen, all public drains, sewers, docks, yards, vaults, and other places where offensive or noxious substances may be within his limits; and to examine the state of the same; and to report thereon to the Board of Health, or Health Wardens, to the Commissioners of streets, or to any Justices of the Peace by whom such report may have been required; and each of the large common sewers in Halifax shall be examined and cleansed throughout, once at least every year, when ordered by such Special Court.

Sec's. 12 & 13. Every tenement used as a dwelling house in any town or place within the limits of a Health Inspector, shall be furnished with a sufficient drain under ground, to carry off the waste water, and also with a suitable privy, the vault of which shall be sunk under ground, and built in the manner hereinafter prescribed, and of a sufficient capacity in proportion to the number of inhabitants of such tenement; and they all shall have the use of such privy in common; and the owner of any such tenement who shall offend against the provisions of this clause, shall forfeit a sum not less than one pound, nor more than five pounds, for every week during which any part of the said tenement is used as a dwelling house. And if upon the report of the Health Inspector, or otherwise, such Special Court shall be satisfied that any such tenement is not provided with a suitable drain, privy, and vault, or either of them, they may give notice in writing to the owner thereof or his agent, if either be an inhabitant of the place, or otherwise public notice in one newspaper or more, if any be printed there, requiring such owner or agent within a time appointed by such Court, to cause a sufficient drain, privy, and vault, to be constructed for such tenement, for the common use of the inhabitants thereof; and in case of neglect to comply with such notice, the said Court shall cause the same to be made for such tenement, and the expense thereof may be recovered from the said owner or agent by the said Inspector, as if the same were a debt due to himself.

Sec. 14. Establishes certain requisites in the construction of privies and the vaults thereof.

Sec. 15. Whenever any privy or vault shall become offensive, and be so found or reported by the Health Inspector, the same shall be cleansed, and the owner or his agent, or the occupant of the land in which any privy or vault are situated, whereof the condition is in violation of, or contrary to the enactments of this Statute, shall remove, cleanse, alter, amend, or repair the same within a reasonable time after notice in writing to that effect given by the Health Inspector, the said Special Court, or any Health Warden, or Justice of the

Constructing
Drains, Pri-
vies, &c.

Cleansing
and Repairing
Privies.

Peace; and in case of neglect or refusal, such cleansing, altering, amendment and repair, shall be done, and all necessary disinfecting substances be procured and used by the Health Inspector or other proper person under the order of the said Court, and at the expense of the owner, agent, or occupant aforesaid, and to be recovered from him as before provided.

Opening Privies.

Sec. 16. No vault or privy shall be emptied without a permit from the Health Inspector; and no vault shall be opened between the fifteenth of June and the fifteenth of September, unless directed by the said Special Court, and the expenses thereof shall be borne by such owner, agent, or occupant, and shall never be less than double the amount charged in any other months of the year, and shall be recovered from him as aforesaid.

Foul or Infectious Substances not to be placed in Streets, &c.

Sec. 21. No person unless duly licensed by the said Court, or other proper authority, shall deposit or cause to be deposited in any street, court, square, lane, alley, wharf, or vacant lot, or into any dock, pond, well, or reservoir, any dirt, saw-dust, soot, ashes, cinders, shavings, hair, shreds, manure, shells, waste water, rubbish, or filth of any kind, or any animal or vegetable substance whatsoever, nor shall any person cast any dead animal, or any foul or offensive ballast into any dock or place within two hundred yards from the extremity of any wharf, nor shall any person land any such foul or offensive animal or vegetable substance within any town or the suburbs thereof; nor shall any person cast any dead animal into the harbour above low water mark, nor below low water mark, without securing thereto a sufficient weight to prevent it from floating.

Removal of Nuisances from Streets, &c.

Sec. 22. If any of the substances in the preceding Section mentioned, shall be thrown or carried from any house, warehouse, shop, or cellar, yard, or other place, into any street, lane, alley, court, square, wharf, dock, public place or vacant lot, as well the owner of such house or other place, as the occupant thereof, and also the person who actually threw or carried the same, shall severally be deemed liable for a violation of this Act; and all such substances shall be removed by and at the expense of such owner or occupant, forthwith after personal notice to that effect given to him in writing by the Health Inspector, or shall be immediately removed by such Inspector, at the expense of such owner or occupant.

Removing Nuisances from Houses, &c.

Sec. 23. All dirt, saw-dust, soot, ashes, cinders, shavings, hair, shreds, manure, oyster or lobster shells, waste water, or any animal or vegetable substance, rubbish, or filth of any kind, in any house or other place, and which any Special

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Court or Health Inspector shall deem it necessary for the health of the town or place to have removed, shall be carried therefrom by and at the expense of the owner or occupant of such house or other place, and be removed to such place as shall be directed, within four hours after notice in writing to that effect, given by the said Court, or the Health Inspector, or the Inspector shall forthwith remove the same at the owner's charge.

Sec. 24. No person in any place within the limits assigned to any Health Inspector, shall sell or offer for sale, or have in his possession in any market or other place, any unwholesome, stale, or putrid meat, fish or fruit, or other articles of provisions, or any meat which has been blown, raised or stuffed, or any diseased or measly pork, under the penalty of not less than two, nor more than ten pounds, for every offence, and such articles shall be forfeited, and be seized and destroyed by the Health Inspector.

Unwholesome Provisions.

Sec. 27. Whenever any person has been duly notified to remove any nuisance, or to cleanse, alter, or amend any vault, or drain, or to perform any other act which it may be his duty to perform in obedience to this Act, or the Statutes, rules, orders and regulations herein mentioned, and the time limited for the performance of such duty shall elapse without a compliance, the Health Inspector shall either remove the nuisance as aforesaid, or issue new notices, or new orders shall be given by such Special Court until the duty is performed; and if in the opinion of such Special Court, or of the Health Inspector, or of the Commissioners of Streets of such place, it shall be for the health or comfort of the inhabitants, that any particular nuisance should be forthwith removed, then it shall be their respective duty to cause the same to be removed without delay, and the expense thereby incurred shall be paid by the owner or occupant of the land on which the nuisance exists, or by whom it was caused, and shall be recoverable from him at the suit of the Inspector.

Regulations as to the Removal of Nuisances.

Sec. 28. Any Health Inspector, or any person authorised by the said Court, or any Justice of the Peace to act in his aid, shall and may at any time between sunrise and sunset, and within the limits of his jurisdiction, enter into any house, building, yard, or other place, and into any vessel or boat, for the purpose of examining any alley, sink, cesspool, privy, vault, drain, sewer, public or private dock or slip, vessel or boat, in order to report to the said Court thereon, or for examining into, destroying, removing, or preventing any nuisance, source of filth, or cause of sickness therein, or for any other legal purpose referred to by this Act, or the Acts herein before mentioned; and if any person shall refuse to admit such officer, or

Entering houses &c. to examine concerning nuisances.

other person so authorised, into such building, yard, lot of ground, out-house, place, or cellar thereto belonging, or into any such vessel or boat, the said Inspector shall on oath complain thereof to the Police Court in Halifax, or to any two Justices in any other place, and obtain a warrant for such entry, and shall thereupon proceed under the authority of such warrant, to examine such building, yard, place, or cellar; and any such vessel or boat, and to destroy, remove, or prevent by all effectual means, and in such manner as the said Court shall direct, any nuisance, source of filth, or cause of sickness that may be found therein.

Punishment
for Violations
of the Act.

Sec. 29. Every person offending against any of the clauses or provisions of this Act, or the orders and directions of any Special Court, and whosoever shall refuse or wilfully neglect to act in obedience to the same respectively, or to obey and comply with the directions and orders of the Health Inspector, and whosoever shall resist or oppose the lawful execution of this Act, or of the said Act concerning nuisances, or of any orders or directions made under the authority of the same, or any Health Warden in the execution of his duty, shall for every such offence be deemed guilty of a misdemeanor, and shall also incur and become liable to a penalty not exceeding twenty pounds, nor less than ten shillings for every such offence, to be recovered in the manner herein after provided.

Limitation
and Prosecution
of penalties.

Sec. 30. It shall be lawful for any Board of Health, or Health Wardens, appointed and acting under the said Act, passed, "more effectually to provide against the introduction of infectious or contagious diseases," and for any such Special Court, or Health Inspector, acting under the said Act concerning nuisances, or this present Act, to limit and restrain to any sum under ten pounds, but not below ten shillings, the amount to be prosecuted for, in respect of any of the several penalties imposed by or incurred under any of the said Acts, for the offences to which they have respectively reference; and all penalties thus limited shall and may be sued for and recovered before any one Justice of the county or place wherein the penalty shall be incurred; and all larger penalties shall be recovered in any Court of Record in the same county.

Who shall
prosecute for
penalties, &c.

Sec. 31. Not only all pecuniary penalties incurred under the said Act, passed to provide against the introduction of infectious diseases, or under the said Act concerning nuisances, or this present Act, or under any orders, rules, or regulations made or given in pursuance of the powers and authorities in the said Acts granted, but also all such monies and expences as shall be expended under this Act, for or in consequence of the neglect of any owner or occupant of any tenement, land,

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boat, vessel or place, to perform any order, shall respectively be sued for and recovered in the name and on the information of any Health Inspector within whose limits the offence was committed, or as a debt due to him, as the case may be; and if there be no Health Inspector, then in the name of the Clerk of the Peace of the county or district, unless the Attorney or Solicitor General think proper to prosecute at the suit of the Crown, and give notice accordingly: and in all cases where the prosecution or suit shall be in the name of the Health Inspector, he shall be deemed the official prosecutor, and shall, as shall also any Health Warden, be a competent witness in such suit or prosecution, and shall recover costs of suit from the defendant, if judgment be given for the penalty or sum prosecuted for, but shall not be liable to pay to the defendant any costs if the judgment pass in favour of the defendant; and all monies to be recovered by any such suit or prosecution, shall be paid into the hands of the Treasurer for the town or county, as the case may be; and shall be appropriated towards defraying the expences there to be incurred in and about the enforcing and carrying into effect this Act and the Acts above recited.

Application of Penalties.

Sec. 33. If any appeal shall be entered against the judgment of a Court of Summary Jurisdiction, or any Justices of the Peace, given for any sum of money sued for by any Clerk of the Peace or Health Inspector, either as a penalty, or as a debt due to him under the provisions of the present or any of the said Acts, and such appeal be not duly prosecuted at the first sitting of the Court to which the appeal is prayed, then on such default being certified by the Clerk thereof, execution shall be forthwith issued from the Court, or by the Justice by whom the judgment was rendered.

Appeals.

Sec. 35. In all indictments and informations to be prosecuted as aforesaid, for offences, misdemeanors and pecuniary penalties, under the present or above recited Acts, it shall be requisite to insert the respective clauses of the Statute, or the rules, orders, or regulations which have been violated or discharged, and under which the penalty is sought to be recovered; and also to state that the offence was committed in violation of such clause or clauses, between two days to be specified therein; and the general form of the conviction before a Justice or Justices of the Peace shall otherwise be as is now by law provided. *Temporary.*

Mode of stating offences in indictments.

It will be observed that certain of the penalties and sums of money mentioned in the foregoing Statutes relating to Health, are directed to be sued for by information, and certain others in the same manner as debts due to the prosecutor. In the

Directions.

former case, the proceedings and Forms will be the same as in like prosecutions for the recovery of penalties, except as is required by the clause last recited. For the said proceedings and Forms, see respectively, Titles,—Information ; Summons ; Conviction. It is to be noted however, that where the prosecution is by information, no final process of distress or of any other description is directed or authorized, by which payment of the penalty may be enforced from the party convicted. Where it is directed that the sum shall be sued for in the same manner as a debt due to the prosecutor, the course of proceeding and the Forms will be found under the Title,—Summary Trials.

— 3 — OATHS.

THERE is a difference of opinion concerning the power of Justices of the Peace to administer oaths in cases under their jurisdiction where an oath is not expressly required or mentioned, or where Justices are not expressly authorised to administer them. But whatever may be said on these points, there is certainly nothing in the law to sanction a practice which very generally prevails—that of administering oaths in cases where Justices of the Peace have no jurisdiction ; the evil of which is clearly stated by Mr. Justice Blackstone, who says (4 Com. 137.) “ The law takes no notice of any perjury but such as is committed in some Court of Justice having power to administer an oath ; or before some magistrate or proper officer invested with a similar authority, in some proceedings relative to a civil suit, or a criminal prosecution : for it esteems all other oaths unnecessary at least, and therefore will “ not punish the breach of them. For which reason it is much to be questioned, how far any magistrate is justifiable in taking a voluntary *affidavit* in any extra judicial matter, as is now too frequent upon every petty occasion ; since it is more than possible that by such idle oaths a man may frequently *in foro conscientia* incur the guilt, and at the same time evade the temporal penalties of perjury.” Lord Coke says, it is an high contempt to minister an oath without warrant of law, to be punished by fine and imprisonment. The Court of King’s Bench has often reprehended and discouraged as much as possible, the taking of voluntary affidavits by Justices of the Peace, in matters not within their jurisdiction. In one case Lord Kenyon said—“ He did not know but that a Magistrate subjects himself to a criminal information for taking a voluntary, extra-judicial affidavit. 3 Burn’s, 531.

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By the 33 G. 2, c. 2. 1 V. 49, Quakers who shall be required upon any lawful occasion to take an oath, shall instead of an oath in the usual form, be permitted to make a solemn declaration or affirmation in these words—"I, A. B. do solemnly, sincerely, and truly declare and affirm;" which solemn affirmation shall be adjudged and taken to be of the same force and effect in all places where by law an oath shall be required, as if such Quaker had taken an oath in the usual form. Provided, that no Quaker shall be admitted to give evidence in criminal causes by such declaration or affirmation; and provided that no persons shall be deemed Quakers within the intention of this Act, unless they shall affirm in the form before directed, that they are of the profession of the people called Quakers, and have been so for one year then last past. *Perpetual.*

Quakers.

A Jew is to be sworn upon the Old Testament, A Mahometan upon the Koran, and others, in general, according to the ceremonies of their religion. The particular opinions of a man professing Christianity are not to be examined into with reference to his being sworn, but he is only to be asked whether he believes the obligation of an oath, the being of a Deity, and a future state of rewards and punishments. But a person who has no idea of the being of a God, or a future state of rewards and punishments, is not admissible. But in such a case, the trial may be postponed until the witness is instructed as to the nature and obligation of an oath. 3 *Burns*, 537-8.

How Oaths
are to be ad-
ministered.

The following is the Form of the Oath of Allegiance.

I, A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to His Majesty King William the Fourth. So help me God.

Concerning the offences of profane cursing and swearing,
See Title,—Swearing.

OFFSET, see,—SUMMARY TRIALS.

ORPHANS.

By the 33 G. 2, c. 1, § 7. 1 V. 42, The Overseers of the Poor of the town of Halifax, shall take order from

time to time, by and with the consent of two or more Justices of the Peace for the county of Halifax, for setting to work the children of all such, whose parents shall not by the said Overseers, or the greater part of them, be thought able to maintain them, or any poor orphans; or by indenture to bind out any such children or orphans as aforesaid, to be apprentices, where they shall see convenient, till such man child shall come to the age of twenty one years, and such woman child to the age of eighteen years; or the time of her marriage; the same to be as effectual to all purposes as if such child were of full age, and by indenture of covenant had bound him or herself. Provided always, that one of the conditions of said indentures shall be, that if the said master or mistress of said apprentice, or other person to whom said indenture may be assigned, shall transport or carry said apprentice out of this Province, to reside or dwell in any other colony or plantation, that then the said indenture shall be void, and the said apprentice shall thenceforth be discharged from any further service to his said master or mistress, or assigns. Provided also, that the children maintained in the orphan house at the expense of the Crown, shall remain and be under the direction of the Governor as heretofore, and bound out in such manner as he shall order and direct. *Perpetual.*

By the 3 & 4 G. 3, c. 9. 1 V. 96, The said clause in the before recited Act, relating to the binding out poor children and orphans, and all the directions therein contained, shall for the future extend to all the other towns in this Province. *Perpetual.*

PARTITION.

By the 13 & 14 G. 3, c. 2. 1 V. 178, All accounts of charges on obtaining and executing writs of partition shall be laid before the Supreme Court, and when approved of, assessors shall be appointed by such Court to assess the amount in due proportion on the proprietors, and to levy the same from them, and to pay it over to the person appointed by the Court to receive the same. And if any proprietor, or other person in possession of any land allotted and assigned under a writ of partition, shall refuse or neglect to pay the sum assessed as his dividend or proportion of the charges aforesaid, it shall and may be lawful for any one Justice of the Peace on complaint of the receiver appointed as aforesaid, to issue a warrant of distress and sale of the delinquent's goods and chattels, for the recovery of the sum so assessed, with the charges of the prosecution.

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Sec. 3. In case no person be resident on any lands allotted and assigned as aforesaid, nor any goods and chattels thereon, whereby the sum due as aforesaid may be levied, it shall be lawful for any one Justice of the Peace to let out any part of such delinquent's lands as may be sufficient to pay, by the produce of the same any such dividend, proportion, or charge so due, and in case no person shall offer to hire the same, such lands shall be held chargeable therewith. *Perpetual.*

NOTE. Although from the words used in the foregoing Act, concerning the issuing of a warrant of distress, it would seem as if such writ might be granted immediately on the complaint of the receiver, without any other proceedings, yet it is considered, that previous to such writ being issued it is requisite that the party complained of should be summoned in the usual form, to appear before the Justice to answer to the complaint, so that he may have an opportunity of shewing cause, if he have any, why he has not paid the sum assessed on him.

PEDLARS.

By the 22 G. 3, c. 1. 1 V. 225, No^r hawker, pedlar, or petty chapman, or other trading person or persons, going from town to town, or other men's houses, and travelling either on foot or with a horse or otherwise, carrying to sell, or exposing to sale, in any house, or in any town or village, whereof such person is not an inhabitant, except in any public fair or market, any wares, goods or merchandise, without previously giving bond, and taking out a license, if at Halifax, from the Clerk of the Licenses, and if in any other county or district, from the Clerk of the Peace, by consent of at least three Justices of the Peace for such county or district, in the same manner as bonds are taken and licences for retailing liquors are granted; for which license there shall be paid half-yearly, as follows: where such pedlar travels on foot, without a beast of burthen,—three pounds; where he travels with one beast,—six pounds; and for every other beast exceeding one,—two pounds; and the number of horses or other beasts, when any, shall be expressly specified in the license. And every person who shall so expose to sale, any goods, wares, or merchandize, except as aforesaid, without being licensed as aforesaid, shall forfeit all such goods, wares, and merchandize so exposed to sale contrary hereto. Fines and forfeitures shall be recovered in any Court of Record.

Sec. 4. All Justices, Sheriffs, Under Sheriffs, and Constables, are hereby strictly enjoined and required to exert their utmost power to see that this law be duly put in execution. Provided, that nothing in the Act shall extend to prohibit any person selling fish, fruits, or victuals, nor to hinder any makers of goods, or their children, apprentices, or servants, from carrying or selling the goods of their own making, nor any tinkers, coopers, glaziers, plumbers, harness menders, or other persons usually trading in mending kettles, tubs, household goods, or harness, from going about and carrying materials for mending the same. *Perpetual.*

By 55 G. 3, c. 8. 2 V. 149, The money arising by virtue of the before mentioned Act, shall be paid into the Treasury of the county or district in which the same is received, and shall be added to the fund raised therein from the granting licenses to retail spirituous liquors, and shall be disposed of by the Grand Jurors and Court of General Sessions accordingly. *Perpetual.*

PERJURY.

PERJURY by the common law, seems to be a wilful false oath, by one, who being lawfully required to depose the truth in any judicial proceeding, swears absolutely in a matter material to the point in question, whether he be believed or not. The false oath must be wilful, and proved to be taken with some degree of deliberation; and as to the falsehood, a party swearing the truth, not knowing it to be so, is guilty of perjury. To found an indictment for perjury, the requisite circumstances are these;—the oath must be taken in a judicial proceeding, before a competent jurisdiction, and it must be material to the question depending, and false. 3 *Burn's*, 604.

By the 32 G. 2, c. 20, § 9. 1 V. 30, It is enacted, that if any person or persons, either by the subornation, unlawful procurement, sinister persuasion, or means of any other, or by their own act, consent, or agreement, shall wilfully or corruptly commit perjury, by his, her, or their deposition in any Court of Record, or being examined *ad perpetuam rei memoriam*, every person so offending and being thereof duly convicted, shall forfeit twenty pounds, the one moiety thereof for the support of this His Majesty's Government, and the other moiety to such person or persons as shall be grieved by reason of the offence, who shall sue for the same by any action of debt, bill, plaint, or information in any Court of Record; and

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shall also be imprisoned by the space of six months, without bail or mainprize. And the oath of such person or persons shall not be received in any Court of Record, until the judgment against him or them shall be reversed; and upon every such reversal, the parties aggrieved shall recover their damages against such person or persons as did procure the said judgment, so reversed, to be given against them or any of them, by his, her, or their action upon the case.

Sec. 10. If the said offender or offenders shall not have any goods or chattels to the value of twenty pounds, then he, she, or they, shall be set on the pillory for one hour, and both his ears shall be nailed to the pillory, and from thenceforth such offender shall be discredited, and disabled forever to be sworn in any Court of Record, until such judgment shall be reversed.

Sec. 11. Every person and persons who shall unlawfully and corruptly procure any witness or witnesses by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury in any matter or cause whatsoever, depending, or that shall depend in suit and variance, by any writ, action, bill, complaint, or information, in any Court of Record, or to testify in *perpetuam rei memoriam*; every such offender, being thereof duly convicted, shall suffer the like pains, penalties, forfeitures and disabilities, in all respects as are hereby directed for the like offences, and the said forfeiture to be recovered and applied in manner as aforesaid.

Sec. 12. As well the Judges of the said Courts where such perjury shall be committed, as also the Justices of Assize and Gaol delivery, and the Justices of the Peace at their Quarter Sessions, shall have power to enquire of all the said offences of wilful perjury and subornation of perjury, and thereupon to give judgment, award process and execution of the same. *Perpetual*.

By the 56 G. 3, c. 6. 2 V. 201, Instead of the punishment prescribed in the aforesaid Act, persons convicted of perjury and subornation of perjury may be sentenced to hard labour, in the house of correction at Halifax or elsewhere, or upon the highways or other public works in the Province. *Perpetual*.

One Justice may bind the offender over to the Sessions. 3 Burn's, 609.

PLEADINGS IN ACTIONS AGAINST JUSTICES,
see Title,—JUSTICES OF THE PEACE.

POLYGAMY, see MARRIAGE.

POOR.

THIS extensive Title will be treated of under two principal divisions, into which it may conveniently be arranged; the one relating to the *support*, and the other to the *settlement* of the poor. In discussing these divisions, the Statutes concerning them respectively, will first be set forth in full, and then they will be treated of and explained at large, under appropriate subdivisions.

I. OF THE SUPPORT OF THE POOR; and herein,

1. *Of Overseers.*
2. *Of the Poor Rate.*
3. *Of Relief.*

THE general Statute relating to the support and management of the poor, is the 4 G. 4, c. 6. 3 V. 149, by which it is enacted as follows :

Voting Money

Sec. 1. It shall be lawful for the freeholders of each township, (the town of Halifax excepted,) or of any settlement or place not comprehended within any such township, and where there are twenty or more freeholders resident, to hold two meetings annually, if necessary, to make provision for the support of their poor ; which meetings shall be held on the first Monday in April, and on the first Monday in November ; and of which meeting, with the place or places of holding the same, the constables for the said townships and settlements respectively, upon a precept directed to them being issued, shall give notice, at least ten days before the said times of meeting respectively ; at which meetings the said freeholders present, having first elected a chairman to preside at the same, shall and may vote such sums of money as they shall judge necessary for the support of their poor for the current year, or for the next ensuing six months of the same ; and shall choose and appoint five freeholders of such township or settlement, any three of whom shall be a quorum, to assess as herein after mentioned, for the sum or sums of money so voted ; and in case the business to be transacted at the said meeting cannot be completed on the said days respectively, it shall be lawful for the said chairman, with the consent of the majority of the freeholders then present, to adjourn the said meeting to the day following, or to any other day, and then to conclude the business of the same.

Sec. 2. If the sum voted at any such meeting be insufficient, the freeholders at their next meeting may vote a further sum to make up the deficiency.

Sec's. 3 & 4. The aforesaid assessors, or any three of them, being first sworn, shall forthwith assess the inhabitants of the townships or settlements for which they have been appointed, in just and equal proportion, and as near as may be, according to the known estate, either real or personal, of such inhabitants, for making up the sums respectively voted for the purpose aforesaid ; and shall appoint collectors to collect and receive the same ; and if any person so assessed shall neglect or refuse to pay the sum for which he or she was assessed as aforesaid, the same shall and may be levied from him or her, by warrant of distress from any one Justice for the county wherein such person resides. Provided, that no person shall be assessed any sum, unless in the opinion of the assessors he shall be able to pay annually one shilling at least ; and provided also, that if any person shall think him or herself over-rated, such person may appeal for redress to the next General Sessions, or the next Special Sessions which may be held for the hearing of such appeals in the county or district ; and the Justices in such Sessions are hereby required and empowered to examine, hear, and determine, every such appeal or complaint, and to give redress as they shall think equitable ; and their order and judgment on such appeal shall be final, and bind all parties.

Assessment and Collection of Rates.

Appeals.

Sec. 5. The Overseers of the poor throughout the Province, (the town of Halifax excepted,) shall continue to be nominated and appointed as now by law provided, and being sworn to the faithful execution of the duties of the office, shall at least twenty days before the times herein before appointed, for meeting to make provision for the poor, issue their precept to the constables of the several townships and settlements respectively, requiring them to notify the inhabitants thereof to meet on the said several days for the purpose aforesaid ; and the said Overseers shall apply all sums of money voted as aforesaid, and received by them in their said capacity, for the before mentioned purpose only ; and if any collector shall neglect or refuse to pay over to the said Overseers any sum collected by him, the said Overseers shall prosecute such collector for the recovery of the same, in any Court of Record ; and the said Overseers shall within one month after the expiration of their office, render to the Clerk of the Peace for the county, to be by him laid before the Justices at their next Sessions, an account of all sums received and expended by them for the support of the poor, and shall account on oath, if

Appointment and Duties of Overseers.

required, before the General Sessions held next after the expiration of their office, for all sums received, and applied, and expended by them as aforesaid; and they shall enter their proceedings in a book to be kept for the purpose; and at the expiration of their office they shall deliver the same to their successors, and shall pay into their hands any balance of money received by them, and remaining unexpended.

Examination
of Overseers
Accounts.

Sec. 6. The Justices in Sessions, (except in Halifax,) shall examine the accounts of the Overseers of the poor, submitted to them as before directed, and shall allow such accounts, if they appear just, and may refuse to allow any sums charged which the said Justices shall have reasonable grounds to believe unduly or unfairly charged or expended.

Fines on Over-
seers for neg-
lect of duty.

Sec. 7. Every person who has been duly appointed an Overseer of the poor, and who shall refuse to serve in the office, shall forfeit five pounds; which sum shall be sued for before any two Justices, by the Overseers who shall be in office next after such refusal, within and for the same place. And the Overseers for the time being, who shall neglect to issue their precept as aforesaid, to the constables, requiring them to notify the inhabitants to meet on the days aforesaid, to vote money as aforesaid, shall severally forfeit and pay ten pounds, which shall be sued for by the Clerk of the Peace, or by any other person who will sue for the same in any Court of Record within the county; and all such Overseers as shall not, within one month after the expiration of their office, render to the Clerk of the Peace an account of all sums received and expended by them, in manner directed by the fifth Section of this Act, shall, on complaint of the said Clerk, or of any one or more inhabitants, forfeit five pounds each, which shall be levied upon non-payment thereof, by warrant under the hands and seals of any two Justices; and all fines by this Section imposed, shall be expended towards the support of the poor of the townships or settlements wherein such fines were incurred.

Amercements
by Sessions.

Sec. 8. In case the freeholders of any township or settlement shall neglect to meet on any of the days before mentioned, for the purpose aforesaid, or having met, shall neglect to make any provision for the poor, or one adequate and sufficient for the purpose, in any or either case, the Justices in the General Sessions, or in any Special Sessions to be called and held for the purpose, shall on the application of the Overseers, amerce such township or settlement in such a sum as shall appear to them to be necessary for the purpose aforesaid, and shall appoint five freeholders of such township or settlement, (any three of whom shall form a quorum,) to assess the same

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upon the inhabitants in manner herein before directed ; which assessors shall nominate and appoint collectors to collect the sums so assessed ; and the assessment so made shall be affixed in some public place within such township or settlement, at least three days before the end of the same Sessions, in order that any of the inhabitants so assessed, may, if they see cause, appeal against such assessment, and that the Justices may determine thereon during the same Sessions ; and all sums for which such amercements and assessments are made, shall be levied and collected by the same ways and means as are herein before directed, where assessments are made by the freeholders at their meetings as aforesaid, and shall be paid over in like manner, and be expended for the purpose aforesaid.

Sec. 9. Where any person appointed an assessor under this Act shall refuse to serve, the freeholders or Justices in each case respectively, shall appoint another in his stead ; and every person appointed an assessor who shall refuse to serve, shall forfeit forty shillings ; and every person who has accepted the said office, and who shall neglect or refuse to make the assessment required within twenty days after his appointment, shall be subject to a fine of five pounds ; which fines respectively, shall, on failure of payment thereof, be recovered by complaint or information by the Overseers of the poor, before any two Justices of the county, and shall be levied by warrant of distress from the said Justices, and by sale of the offender's goods and chattels ; and all such fines shall be expended towards the support of the poor of the township or settlement within which such fines were incurred. Provided, that no person shall be obliged to serve as an assessor more than once in three years.

Assessors refusing to serve.

Sec. 10. Every person appointed a collector as aforesaid, who shall refuse to serve, shall forfeit forty shillings, and another person shall forthwith be appointed in like manner to serve as aforesaid ; which fine, on failure of payment thereof, shall be recovered by the Overseers of the poor where such fine was incurred, before any two Justices for the county, and be levied by warrant of distress from the said Justices, and by sale of the offender's goods and chattels, and be expended for the use of the poor of the township or settlement.

Collectors refusing to serve

Sec. 11. Every collector shall once in every three months account with and pay into the hands of the Overseers of the poor where he is acting, all such sums as he may have collected or received, and upon his neglect so to account and pay, he shall be prosecuted for recovery of the same by the Overseers for the time being, in any Court of Record ; and every person who has accepted the said office of a collector,

Fines on Collectors for neglect of duty.



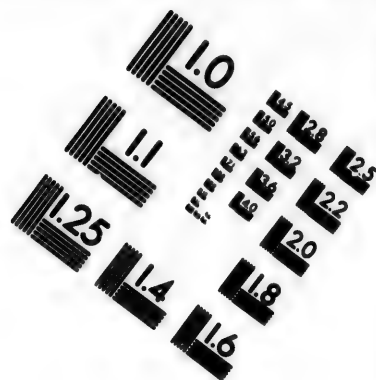
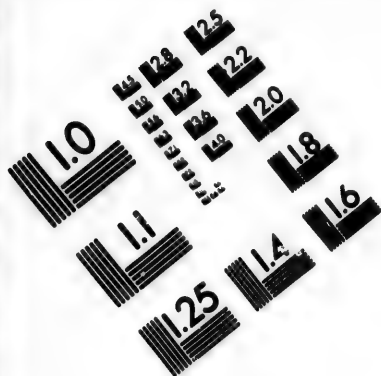
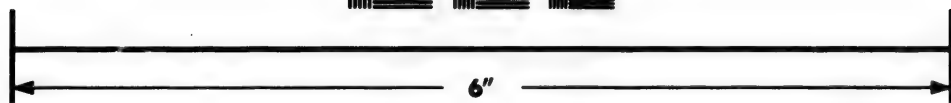
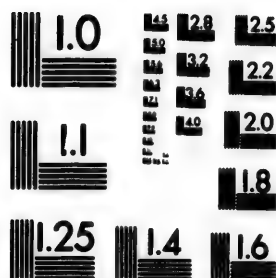


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and who shall neglect for thirty days thereafter to perform the duty required of him by this Act, of enforcing, agreeable to the directions of the same, the payment of the sum or sums which he was appointed to collect, shall forfeit five pounds for every such neglect; which shall in like manner be sued for and recovered, and be expended for the use of the poor of the township or settlement wherein such fine was incurred.

Recovering
expenses of
relief from
pauper's es-
tate.

Sec. 13. When any person shall apply for and obtain relief from the Overseers of any town or place, and it shall happen that such person at the time of such application or relief was possessed of, or entitled to any property, real or personal, out of which the expenses incurred for his or her relief may be repaid, it shall be lawful for such Overseers, as creditors to such person on behalf of the public, to demand and receive from him or her a repayment of all or any part of the expenses so incurred, and if need be, to enforce the payment thereof by the usual remedies of attachment, arrest, or other legal process; and all monies so received or recovered, shall be accounted for by such Overseers, as other monies received for the use of the poor.

Levying for
rates, pending
an appeal.

Sec. 14. If any person assessed by virtue of this Act, shall refuse or neglect to pay the sum for which he was assessed, it shall be lawful for the collector or collectors appointed to receive the said rates, notwithstanding any such appeal as aforesaid, to levy for the amount of such person's rate, by warrant of distress, in manner herein before provided for the recovery of the same.

Reimburse-
ment on ap-
peal.

Sec. 15. If the person so appealing to the next General or Special Sessions, shall make it appear to the Justices thereof, that he hath been assessed or taxed more than his just proportion of the amount of the said assessment, then it shall be lawful for the said Justices to cause such appellant to be relieved and reimbursed the excess of such rate, by order to the Overseers for the township or settlement within which such person was overrated, which Overseers are hereby directed to refund the same.

Sec. 16. This Act shall not extend to repeal, alter, or affect any of the laws now in force relating to the settlement of the poor.

Sec. 17. All former Acts relating to the support of the poor are hereby repealed, except so far as they relate to the town of Halifax. *Perpetual.*

By the 5 W. 4, c. 30, s. 4, it is enacted as follows:—

Number of
Assessors.

Sec. 18. In the town meetings to vote money for the support of the poor, not less than seven nor more than twelve assessors may be appointed.

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Sec. 2. No assessor of poor rates shall upon any pretence whatsoever, be exempt from being assessed and paying his just proportion of all such rates as shall be duly voted and assessed for the support of the poor; and if any assessor shall refuse or neglect to rate and assess himself in a due and just proportion of all or any such rates and assessments as shall be duly voted or rated for the support of the poor, on the township or settlement for which he shall be an assessor, he shall forfeit and pay the sum of five pounds, to be sued for, recovered, and applied in manner and form as is directed by the Act of which this is an amendment. *Perpetual.*

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selves.

By the 3 W. 4, c. 63. 4 V. 240, The General Sessions shall establish the rate of commission to the collectors of poor rates, the same not to exceed five pounds for every hundred pounds by him collected. *Perpetual.*

1. Of Overseers.

By the 5 G. 3, c. 1. 1 V. 106, The Grand Jury shall annually, at the General Sessions, nominate out of every township, ten fit persons, out of whom the Court shall appoint five, to be surveyors of lines and bounds, and Overseers of poor of each respective township; and if any person so nominated and appointed shall leave the Province, change the town of his residence, or die within the period for which he was appointed to serve, any two Justices for the county shall and may appoint a fit person or persons to act in such vacant office, until another shall be appointed at the next ensuing General Sessions. *Perpetual.*

By 51 G. 3, c. 24. 2 V. 79, The Grand Jury at such term of the General Sessions as the Court shall direct, shall nominate such number of fit persons as the Court shall direct, to discharge the duties of town officers, out of whom the Court shall appoint such number as they may deem expedient. *Perpetual.*

NOTE. It will be seen by the before-recited general Act concerning the support of the poor, that certain fines are imposed on persons refusing to serve as Overseers, and also for the neglect of certain duties of the office.

For all neglects of duty, and abuses in office, they are punishable by indictment. If an Overseer do not provide for the poor, he is indictable, and if he relieve the poor when there is no necessity for it, it is a misdemeanor. 4 Burn's, 28.

No expenses of their own will be allowed to the Over-

seers beyond what are barely necessary. A salary for their services is not allowable. When they have advanced money for the support of the poor, they may reimburse themselves out of any subsequent rate made during their year. *Id.* 183.

2. *Of the Poor Rate; and herein,*

1. *Upon whom the rate may be made.*
2. *What property is rateable.*
3. *Where to be rated.*
4. *Of the proportion in which the rate shall be made and paid.*
5. *Appeal and the power of the Sessions thereupon.*
6. *Of distraining for the Poor Rate.*

1. *Upon whom the rate may be made.*

Shall assess the inhabitants.] By these words in the Statute, it is plain that all persons who have their residence within the township or settlement, and who possess within it any real or personal estate or property of any description, are liable to be rated, except as is mentioned in the Proviso,—“Persons who in the opinion of the assessors are not able to pay annually for this purpose, the sum of one shilling at least.” Although this Statute mentions only *inhabitants* as liable to be rated, yet it would seem by the Statutes concerning non resident proprietors of lands, that they may be rated for such lands in the places where the lands are situated, towards the support of the poor in such places, for which see Title,—Absentees.

The occupier of land, in general, is to be charged with the rate, and the reason is that the poor rate is not a charge upon the land, but upon the occupier in respect of the land. 4 *Burn's*, 40.

No inhabitant is to be taxed by a parish, in regard of any estate he hath elsewhere, in any other town or place, but only in regard of the visible estate he hath in the town where he dwells. The lessee of a stall in a market town, who comes weekly to the market to sell his wares, shall not, it would seem, be rated for the poor in such town: neither shall a man who takes up his lodging for a week in a town. If the owner of a house occupy a part thereof only, but his servants occupy other parts, and no one reside in the house but a poor person, permitted to do so out of charity, the owner is rateable as occupying the whole.

A corporate body are occupiers and inhabitants for the purpose of being rated.

A schoolmaster occupying a house and garden belonging to the school is rateable, although held by him as a recompense for teaching, &c., he being a beneficial occupant. Where residence upon, or the use of a property, is, merely as a servant of the Crown, and for public offices or purposes only, the party so residing or occupying is not rateable for the property. 4 Burn's, 41 to 46.

2. *What property is rateable.*

According to the known estate either real or personal of such inhabitants.] These words, as far as they regard real estate, will of course include lands, and houses, and buildings of every description, with all the hereditaments, privileges, and appurtenances belonging or appertaining to real or landed property. As they regard personal estate, it seems equally clear, that they subject to the rate all kinds of local and visible personal property. It is true that in England it has been determined that a farmer's stock, household furniture, and some other descriptions of personal property, are not rateable to the poor, but the reason for such decisions seems to be, that the English Statute of the 43 of Elizabeth, c. 2., which is the general Act on the subject, does not contain a word about personal estate, but only provides that every inhabitant shall be rated. It is for this reason, therefore, it would appear, that it is said in 4 Burn's, page 51, that the Court of King's Bench, from the difficulties attending the matter in practice, have all along been averse from delivering any opinion upon the general question, whether or how far personal estate is liable to be rated to the poor, but have determined the several cases, upon their own particular circumstances, or quashed the rates for insufficiency in point of form. No such difficulties, however, exist in this Province, as our Statute contains the extremely comprehensive words already cited as to personal estate. It appears quite clear, therefore, that here, a farmer's stock and household furniture, which certainly are personal estate as much as any other description or part of a man's goods, and in short as already observed, all articles and descriptions of personal property, of a local and visible nature, are by these comprehensive words of our Statute liable to be rated.]

Stock in trade is liable to be rated, as yielding certain profits. The bare possession of personal property is evidence from which the conclusion may be drawn that the possessor is rateable for it. Money out at interest is not rateable, nor money vested in the public funds. Salaries, and the profits of an attorney are not rateable. Rent is not the subject of a poor

rate. Lime works are rateable in the hands of the occupier. So is a slate work. Where a farmer lets his dairy of cows, he may be rated for the profits, as part of the profits of the farm, or they may be rated in the hands of the dairyman, provided the farmer be not rated for the profit he derives from letting them to hire. The profits of a mineral spring, or any other spring of water, are part of the produce of the land, and therefore the occupier is rateable for the whole, as one estate. Lands converted into a dock are rateable. 4 Burn's, 54 to 77.

3. Where property is rateable.

FOR lands and tenements, the assessment is of course made where they lie. 3 Burn's, 83.

NOTE. It has been already mentioned, that the person who is in possession of personal goods is rateable for them. This of course, according to the Act, must be in the place of which he is an inhabitant.

It has been expressly decided that vessels are liable to be rated in the parish where they are locally and visibly domiciled, although out of it at the time of making the rate; but not where they have never been within the parish. It is not necessary for the purpose of making property rateable in any parish, that it must be permanent there, and produce profit there. 4 Burn's, 89.

4. Of the proportion in which the rate shall be made.

In just and equal proportion.] A rate is not to be presumed unequal, because lands and houses are not rated alike. There may be reason to make a difference between them. For there are several charges incident to houses, which do not fall upon lands, to lessen their yearly value. Unless a rate be manifestly unequal, the Court will presume it equal. No general rule can be laid down as to the proportion to be observed in rating houses and lands. The proportion must ever depend on local circumstances. A person must be rated according to the present value of his estate, whether it continue of the same value as when he purchased it; or whether the estate be rendered more valuable by the improvements made upon it. If a person choose to keep his property in money, and the fact of his possessing it be clearly proved, he is rateable for that; but if he prefer using it in the amelioration of an estate or other property, he is rateable for the same in another shape. In whatever way the owner makes his estate more valuable, he is

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liable to contribute to the relief of the poor, in proportion to that improved estate ; and whatever be the proportion of rating in a parish, whether to the full value or otherwise, the rate must be equally made on all persons ; there cannot be one medium of rating for one class of persons, and another for another class. Rent is not a certain criterion of value by which to determine a proportion of rate. Nor is the land tax a rule for the poor rate. 4 Burn's, 95—7.

5. *Appeal ; and the power of the Sessions thereupon.*

By the words " *next Sessions*," used in the Act, is to be understood the next Sessions to which the party can by possibility appeal, after being aggrieved by the rate ; and this is always a question of fact. See 4 Burn's, 103.

[NOTE. As the Statute does not direct that any notice of appeal shall be given, it would seem that no such notice is absolutely requisite, although it appears to be most proper, and is certainly most convenient to give it.]

When the appellant objects to his being rated at all, it is the practice for the respondents to begin ; but if he object to the quantum of the rate, then the burthen lies on him, and he should begin. Where the appellant disputes before the Sessions the *quantum* of the rate, it is not sufficient for the respondent to shew that the appellant is in possession of *some* rateable property within the parish, they must also shew some probable ground for the *amount* at which they charge the party in the rate. 4 Burn's, 106.

On examining the provisions concerning appeals in our Statute, with reference to the English Statutes and decisions on the subject, it seems doubtful whether, or how far, the Sessions here, on an appeal, have the power to quash or to amend a rate, especially to alter or amend it by adding to the rate the names and proportions of persons not previously included therein. The following clauses of the before recited Statute of the 4 G. 4, c. 6, are the only provisions in force concerning such appeals.

Sec. 4. " Provided, that if any person shall think himself overrated, he may appeal for redress to the next General Sessions, or the next Special Sessions which may be held for the hearing of such appeals, and the Justices are empowered to examine, hear, and determine such appeal and to give redress as they shall think equitable ; and their order and judgment shall be final and bind all parties."

Sec. 15. " If the person so appealing shall make it appear to the Justices that he hath been assessed more than his

Remarks as to amending or setting aside a rate.

just proportion of the amount of the assessment, it shall be lawful for the Justices to cause him to be relieved and reimbursed the excess of such rate, by order on the Overseers, who shall refund the same." By the English Statute of the 43 Elizabeth, c. 2, it is provided, that the Sessions, on an appeal, may "take such order therein as to them shall be thought convenient, and the same to conclude and bind all the said parties." By the 17 G. 2, c. 38, it is further provided, that "On all appeals from rates and assessments, the Justices shall amend the same in such manner only as shall be necessary for giving relief, without altering such rates, &c. with respect to other persons mentioned in the same; but if upon an appeal from the whole rate it shall be found necessary, they may quash or set aside the same, and direct a new and equal rate to be made." But by the 41 G. 3, c. 23, Ample power is given to the Sessions on appeals, "to amend rates or assessments, either by inserting therein, or striking out the name of any person, or by altering the sum therein charged on any person, or in any other manner they may think necessary, without quashing the rate, or they may quash it wholly." Previous to this Statute, but subsequent to the aforesaid one of the 17 G. 2, it was decided in one case mentioned in 4 Burn's, 52, that "the Sessions ought not to have quashed a rate, but should have added those persons and that property which it was thought were illegally omitted," but in a subsequent case, stated in the same book, page 55, the Court decided, that "the Sessions on the Appeal could not add to the rate the names of persons who were left out of it, because thereby the proportion of every other person would be altered, but they were bound to quash the rate." In a much later case, reported in 16 East, 380, where the question was as to the rateability of stock in trade, which in assessing the owner, had been purposely omitted, the Court said, "The Justices should have amended the rate, and not quashed it. The 41 G. 3, c. 23, was passed for the very purpose of enabling them to do so, in order to prevent the inconvenience of the parish being without funds for the maintenance of its poor in the meantime." Now, as to our own Act, it has been seen, that it does not contain a word about amending a rate in one way or another, or as to setting it aside, and therefore, reasoning by analogy, upon a consideration of the before mentioned English Statutes and decisions, it does seem rather more than doubtful whether the words used in the before recited clauses of our Statute, do convey sufficient power to the Sessions, either to amend a rate by adding other names and sums to it, and consequently to alter the several proportions throughout, or to set aside the rate altogether. It is not known

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that these points have yet been decided upon, in the higher Court. It is indeed provided in the Act, that "the Justices may cause a party to be reimbursed the excess beyond his just proportion of the amount of any assessment," but it is not easy to imagine how this can be done, where it is made to appear on the appeal that several persons who were liable have not been included in the rate. It may probably be said that these words in the first of the before recited clauses, "give redress as they in their judgment shall think equitable," may be so construed as to convey to the Sessions a discretionary power to alter or amend a rate throughout, or to set it aside; but on a view of the before mentioned English Statutes and decisions, it would much rather seem that such a conclusion could not be maintained. Moreover, it does appear sufficiently plain, that these words, when considered in connection with the subsequent clause on the subject, are only intended to relate to the granting relief or reimbursement to the party appealing. Upon the whole it seems highly desirable that enactments should be made similar to those in the last cited English Statute, so as to remove the doubts and difficulties here suggested.

6. *Of distraining for the Poor Rate.*

It is believed to be almost universally the practice in this Province, to issue a warrant or warrants of distress against parties, immediately on the representation, or oath of the Collector, that they have not paid their rates, without summoning them to answer for the alleged neglect; but it will be clearly seen by the following authorities that such practice is altogether illegal, and will consequently render persons acting upon it liable to prosecutions for damages, or probably the Justice under certain circumstances, to proceedings of a criminal nature.

The nonfeasance of the party shall not be left to the judgment of the officer, who may out of private resentment sell his neighbor's goods without sufficient cause, but oath of the refusal must be made before the Justice. And it is reasonable that the party should be heard in his defence, for he may shew cause, variously, why a distress should not be granted, as that the rate was not regularly allowed, or that he had given notice of appeal, or that no demand or refusal had been made, and the like. *Burn's*, 109.

A summons must precede a warrant of distress, which is in the nature of an execution. On the summons the party may shew a sufficient reason to the Magistrates why a warrant of distress should not issue; as for instance,—that he has al-

ready paid the assessment to one of the parish officers, who has not accounted for it. But it is an invariable maxim in our law, that no man shall be punished before he has had an opportunity of being heard: whereas, if a warrant of distress were to be issued, without any previous summons, the party would have no opportunity of shewing cause why the execution should not issue against him. 4 *Burn's*, 110.

It would be strange that a distress should be taken upon a man's goods without hearing him. *Id.* 115.

No action of debt will lie for a poor rate. The Statute considers the person rated and refusing to pay, as an offender. And it gives no authority but to distrain the goods of the offender. *Id.* 114.

3. Of Relief.

THIS subject may be classed under four distinct heads; as—

1. *Of the liability of Parents and Children to maintain each other.*
2. *Of the Order of Maintenance.*
3. *Of persons deserting their families.*
4. *Of Relief in general, and herein what persons are to be relieved, and of the Ordering of the Poor.*

1. How far Parents and Children are liable to maintain each other.

THE Statute of the 10 G. 3, c. 1, § 5. 1 V. 158, enacts, "That the father and grandfather, mother and grandmother, and the children, and grand children, severally and respectively of every poor, old, blind, lame, and impotent person, or other poor persons not able to work, being of sufficient ability, shall at his, her, or their charges and expences, relieve and maintain every such poor person as aforesaid, in such manner as the Justices of the Peace at their General or Quarter Sessions shall order and direct, on the penalty of forfeiting and paying five shillings for each person so ordered to be relieved, for every week they shall fail therein, to be sued for, levied, and recovered in the usual manner, and to be applied for the use of the poor." *Perpetual.*

This provision only extends to natural relations; therefore it has been determined by the latest decisions, contrary to former ones, that a man is not obliged to maintain his wife's children by a former husband. Nor is a father obliged to maintain his son's wife, where the son had run away. Nor a son

in-law to maintain his living, yet may be compelled to do so much more than in time past.

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in-law to maintain his wife's mother. Though the father be living, yet if he be unable, the grandfather, being of ability, may be compelled to keep the grand child, and also to pay so much money as the Justices shall think reasonable for the time past.

The *reputed* grandfather or grandmother are not within the Statute, for a bastard is *filius populi*. See 4 *Burn's*, 121.

2. Of the Order of Maintenance of Parents and Children.

Of every poor, old, blind, lame, and impotent person, or other poor persons not able to work.] The order must set forth that the person is poor, &c., and not able to work. It must also state that the person on whom it is made is of *sufficient ability*. 4 *Burn's*, 122.

An order to pay indefinitely as to time, is good. The order must be made by the Justices of the county where such *sufficient person* dwells. The pauper is not to be sent to such *sufficient person*. It ought to appear in the order that the party to be relieved is become chargeable to the parish, for unless he be so, the parish has no ground of complaint. 4 *Burn's* 122-3.

[NOTE. The order can only be made in the Sessions.]

3. Of persons deserting their families.

The sixth clause of the last mentioned Statute enacts,—
“That it shall and may be lawful for the Overseer or Overseers of the poor of any township, where any husband or father shall absent from and forsake his wife and children, or any widow shall absent from and forsake her children, and leave them a public charge, to apply to two Justices of the Peace, and by warrant under the hands and seals of the said two Justices, to take and seize the goods and chattels, and let out and receive the annual rents and profits of the lands and tenements of such husband, father or mother, so absconding, for and towards the maintaining, bringing up and providing for such wife, child, or children so left as aforesaid; and so soon as the said seizure shall be allowed of and confirmed by the Justices in their General or Quarter Sessions, it shall and may be lawful for the said Overseers, or any two of them, from time to time and as the case may require, to sell and dispose of so much of and so many of the said goods and chattels at public sale to the highest bidder, and to apply the money arising thereby towards the maintenance of such poor family left as aforesaid.

Sec. 8. Any person aggrieved by any thing done under the foregoing clause may appeal to the next General Sessions, where redress may be granted." *Perpetual.*

The order of the two Justices under the foregoing clause must state how much of the goods or rents should be seized, and must specify the quantum of relief to be appropriated out of them, and in case of rents, must limit the period of such appropriation. 4 *Burn's*, 125.

For the punishment of those who desert their wives and children, see *Title*,—Vagrants.

4. *Of Relief in general; and herein, what Persons are to be relieved, and of the ordering of the Poor.*

By the 10 G. 3, c. 1. 1 V. 157, "No town or township shall be obliged to maintain any poor person, unless such person be a native of such town, or township; or have served an apprenticeship; or have lived as an hired servant one whole year next before such person's application for relief; or have executed some public annual office; or shall have been assessed and paid his or her share of the taxes for the poor of such place, or any public taxes, during one whole year at one time." *Perpetual.*

Remarks.

This clause does not specify any particular descriptions of persons, who, with regard to poverty, sickness, or infirmity, are to be relieved, but only uses the general expression, *poor person*. However, as the clause which has been already recited relating to parents and children relieving each other, declares, that relief shall be ordered in such cases,—“to every poor, old, blind, lame, and impotent person, or other poor persons not able to work,” it would seem, that where there are no parents or children of such persons, on whom an order may be made, they should, and indeed must be relieved by the Overseers, if they belong to the township. Moreover, it seems sufficiently clear that the general words “poor person” must be construed to include all persons who are so poor or unable to provide for themselves as to need public relief. Another question which arises upon our Statutes concerning the poor, is this,—Who are to discriminate and determine as to the individuals who are to be considered poor and entitled to relief, or otherwise. In England, the laws provide in general that Justices of the Peace are to examine and decide on the matter, and their orders to the Overseers are requisite for obtaining such relief. In our Statutes there is no such provision, nor

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indeed any other on the point, and therefore it seems sufficiently clear that the matter must rest entirely in the discretion and judgment of the Overseers. It is indeed generally, if not universally, the practice for the town meetings to determine as to the individuals who are to be relieved, but certainly there is nothing in the law to convey to them the power of doing so, or to sanction such a practice, but the proceeding is altogether irregular and improper. Many forcible reasons may be urged to shew that it is much more suitable, and consistent with humane considerations, that the discretionary judgment on the point should rest with the Overseers, rather than with the town meetings. Indeed, as our Statutes stand, the Overseers alone are the persons who have a right to determine respecting it, and they are bound to do so. The town meetings have merely the power of granting the money deemed to be requisite, and of appointing persons to assess it. It is very desirable that an amendment in this respect should be made in our Statutes, whereby according to the English Acts, the power and right of examining and determining on the subject shall be vested in a Justice or Justices, in conjunction with the Overseers, and making an order of Justices requisite for obtaining relief. Under our present Statutes, the right and duty of determining as to the extent of relief to the poor, individually, and of the ordering of them with regard to situation, rest in like manner exclusively with the Overseers, subject to the control of the Sessions as to their accounts, although on these points, also, the town meetings illegally and improperly undertake and are allowed to decide. In these meetings the poor are generally let at public auction, to be boarded, or rather to be starved and punished with the lowest bidder; a practice which is not only without any sanction of law, but is revolting to humanity, and in many instances is but adding to the afflictions of the poor. The Overseers should select suitable persons to board and take care of the poor, in all cases where such boarding is requisite, and where there is no public asylum for their reception.

If an Overseer do not provide for the poor he is indictable. 4 *Burn's*, 28. He has been holden to be indictable for neglecting to supply medical assistance, when required, to a pauper, labouring under dangerous illness, though such pauper was not in the parish work house, nor had, previously to his illness, received or stood in need of parish relief. *Id.* 131.

The Sessions have no power to order the Overseers to pay the bills of a surgeon or a nurse. These persons have a proper remedy by way of action against the officers. *Id.*

Foreigners must be maintained where they are found. In

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one such case the Judge said, "You must keep them when you have them, for aught I know, for it seems to be a case omitted out of the Statute." *Id.* 197.

NOTE. It has been already seen, by a clause in the before recited Act of the 4 G. 4, c. 6, that where a pauper is possessed of any property, out of which the expences incurred by his relief may be recovered, the usual remedies by arrest or other legal process may be employed for obtaining such expences.

Form of the Summons on non-payment of Rate.

County of } To A. O., of the township of — in the
} said county, yeoman.

[Seal.]

I, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county of —, do hereby summon you personally to appear before me at my dwelling house, at — in the said county, on — next, the — day of —, at the hour of —, in the forenoon of the same day, to shew cause why you refuse to pay the sum of —, duly rated and assessed upon you, in the rate or assessment made for the relief of the poor of the said township of —, for the present year, from the first Monday in —, in the year of our Lord —, until the first Monday in —, in the year —; otherwise I shall proceed as if you had appeared. Given under my hand and seal at —, the — day of —, in the year of our Lord —.

A. M., J. P.

The Warrant of Distress thereupon, may be thus :

County of } To A. B., one of the Constables of the
} township of — in the said county.

[Seal.]

WHEREAS in and by a rate and assessment made and assessed according to the Statute in that case made and provided, A. O., an inhabitant of the said township of —, was duly rated and assessed for and towards the necessary relief of the poor of the said township for the present year, from the first Monday in —, in the year of our Lord —, until the first Monday in —, in the year —, in the sum of —. And whereas it duly appears unto me, one of His Majesty's Justices of the Peace in and for the said county, as well upon the oath of A. C. a collector of the said rates, as otherwise, that

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the said sum of — hath been lawfully demanded of the said A. O., and that he the said A. O. hath refused and doth refuse to pay the same ; and whereas the said A. O. having appeared before me in pursuance of my summons for that purpose, hath not shewed unto me any sufficient cause why the same should not be paid : [Or, if he does not appear, say— And whereas it hath been duly proved to me, upon oath, that the said A. O. hath been duly summoned to appear before me the said Justice to shew cause why the same should not be paid, but he hath neglected to appear according to such summons, and hath not shewed to me any sufficient cause why the same should not be paid ;] These are therefore to require you, forthwith, to make distress of the goods and chattels of him the said A. O., and if within the space of five days next after such distress by you taken, the said sum together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay over the said sum of — to the Overseers of the poor of the said township of —, rendering to him the said A. O. the overplus upon demand, the necessary charges of taking, keeping, and selling the said distress being first deducted. And if no such distress can be made, that then you certify the same unto me, to the end that such further proceedings may be had therein as to law doth appertain. Given under my hand and seal, the — day of — in the year of our Lord —

A. M., J. P.

NOTE. The Forms in the case of an order by the Sessions on a parent or child for compelling relief, will be found in the Addenda to 4 Burn's, 683. This being a proceeding in the General Sessions, it is thought not requisite to insert them here.

Form of an Order to seize the Goods and receive the Rents of the Lands of Parents or Husbands who have run away.

County of } To the Overseers of the poor of the township
of — of — in the said county.

WHEREAS it appears unto us whose names are hereunto set and seals affixed, two of His Majesty's Justices of the Peace for the said county, as well upon the complaint and application of the Overseers of the poor of the township of — in the said county, as upon due proof on oath before us made, that A. O. late of the township of — aforesaid, in the county

aforesaid, yeoman, hath gone away from his place of abode at — in the township aforesaid, into some other county or place, and hath left — his wife and — of their children upon the charge of the township of — aforesaid, the place of their last legal settlement; and that the said A. O. hath some estate whereby to ease the said township of their said charge, in whole or in part,—we do hereby authorise and command you the said Overseers of the poor of the said township of —, to take and seize — and — of his goods and chattels, and to receive — [specifying the sum] of the annual rents and profits of the lands and tenements of him the said A. O. at — aforesaid, for and towards the discharge of the said township for the providing for his said wife, and bringing up and maintaining of his said children: and with this warrant you are to appear at the next General Sessions of the Peace to be holden for the said county, and certify then and there what you shall have done in the execution hereof. Given under our hands and seals at — in the said county, the — day of —, in the year of our Lord —

[Seal.] A. M., J. P.

[Seal.] A. W., J. P.

For the recovery of fines imposed by the first of the before recited Acts, for the non-acceptance of office, or the neglect of duty, and which are directed to be recovered before Justices, the proceedings will be the same as in similar cases already mentioned in this work, and will be found under the respective Titles,—Information; Summons; Conviction; Distress.

II. OF THE SETTLEMENT OF THE POOR.

What persons
cannot gain a
Settlement.

THERE are several descriptions of persons who are incapable of gaining a settlement by any acts of their own. This is the case with married women during their marriage state. What is their proper settlement will be considered in another place. The next description is,—infants under the age of seven years. It has been decided that an infant under seven years cannot be removed from the parish in which his property lies. A deserter, while he is such, can do no act to gain a settlement. Soldiers, while quartered in any place cannot gain a settlement by hiring and service. 4 *Burn's*, 198—9. It will now be shewn by what methods a settlement may be gained.

Who shall
have a Settle-
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relieved.

By the 10 G. 3, c. 1. 1 V. 157, No town or township shall be obliged to maintain any poor person, unless such per-

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son be a native of such town or township, or have served an apprenticeship, or have lived as an hired servant one whole year next before such person's application for relief, or have executed some public annual office, or shall have been assessed and paid his or her share of the taxes for the poor of such place, or any public taxes during one whole year, at one time. And every person within the said descriptions, shall be entitled to a settlement in the respective towns or townships wherein such person shall be qualified as aforesaid.

Sec. 3. Any person or persons who shall apply to the Overseers of the poor for relief, not having obtained a lawful settlement in the township, shall be required to declare on oath before one Justice of the Peace for the said township, or county wherein such township shall be, his, her, or their last place of residence; and if they are found to have gained any lawful settlement within this Province, a true copy of the said declaration, attested by the said Overseers of the poor, and certified by the said Justice of the Peace, together with the amount of expense incurred, shall be transmitted to the Overseer of the poor of the township to which the said person or persons shall belong; and in case they refuse, or neglect to remove the said person or persons, and pay the expences incurred, it shall be lawful for any two Justices of the Peace for the county or township where such person or persons have become chargeable, by a warrant under their hands and seals, to cause him, her, or them to be removed to the township, where they last obtained a lawful settlement; and the Overseers of the poor are hereby required to receive such person or persons, and to pay such sum and sums of money as shall have been necessarily expended as aforesaid, to the Overseers of the poor of the township from whence such person or persons have been removed. Provided, that in case such Overseer or Overseers of the poor, shall not have money in their hands wherewith to answer said expense, such Overseer or Overseers shall stand charged therewith until the next assessment to be made on the township to which such poor person shall belong.

Sec. 4. It shall be lawful for any two Justices, on complaint of the Overseers of the poor, to bind out any person or persons who shall be found begging or strolling about, for any term not exceeding one year.

Sec. 7. In case of the death of the parents of any child or children, who have gained a settlement in any township as aforesaid, all and every such child or children shall be supported by such town or township wherein the parents so gained a settlement.

Examination
as to Settlement
and of Removal.

Sec. 8. If any town or township, or person or persons, shall think themselves aggrieved by any proceedings had in virtue of this Act, such town or township, person or persons, may appeal for redress to the next General or Quarter Sessions of the Peace, held for the county wherein such town or township shall be, or wherein such person or persons shall reside; and the Justices thereof are hereby required and empowered to hear and determine every such appeal or complaint, and to give redress as they in their judgment shall think equitable; and such their order and judgment shall be final, and bind all parties. *Perpetual.*

It has been seen that this Statute specifies six several modes by which a settlement may be gained, all of which, with various matters relating to the subject at large, will now be treated of in the following order :

1. *Settlement by Birth.*
2. ——— *Apprenticeship.*
3. ——— *Hiring and Service.*
4. ——— *Public Office.*
5. ——— *Payment of Taxes.*
6. ——— *Parentage, and herein of Emancipation.*
7. ——— *Marriage.*
8. *Of Removals.*

1. *Of Settlement by Birth.*

THE settlement by birth may be proved by the copy of the parish register of christenings, and by identifying the person. 4 *Burn's*, 201.

Also, the parents may prove the time of birth, and after their death their declarations are evidence of that fact. *Id.* 241.

1. *Of Bastards and their Settlement by Birth.*
2. *Of Legitimate Children and their Settlement by Birth.*

1. *Of Bastards.*

[NOTE. It is not in this place questioned, who shall or shall not be deemed a bastard; but the settlement only is considered of such as are first supposed to be bastards; other matters relating to them, as concerning their filiation and maintenance, and the like, are treated of under the Title,—Bastards.]

A bastard gains a settlement in its place of birth, from necessity; for being *nullius filius*, it cannot otherwise be pro-

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vided for, except a reputed father can be found. But this rule admits of divers exceptions ; which are,—

1. If a woman come into a place by privity and collusion of the officers where she belongs, and be there delivered of a bastard ; such bastard gains no settlement notwithstanding its birth.

2. Also a bastard born after an order of removal of the mother is made, but before her actual removal, shall not be settled where so born, but at the mother's settlement.

3. If a woman pregnant be removed by an order, and she be delivered, and there be an appeal, and the order be reversed, the child must be sent back with the mother.

4. A bastard born in the house of correction shall be sent to the place of its mother's settlement. The same of a bastard born in the county gaol.

5. A bastard born while the mother is removing under an order, shall go with her to the place to which she is removed. 4 *Burn's*, 201-3.

If the mother and the bastard child have different settlements, it seems that the child, even as all other children, shall go with the mother for nurture until the age of seven years, as a necessary appendage of the mother. But if she voluntarily desert it, it seems that the cause of nurture then ceases, and that then it may be sent to its place of settlement. Whilst the child continues with its mother as a nurse child, and during that time not removeable to its place of settlement, yet the place where the child's proper settlement is, shall maintain it in that other place where it is remaining with the mother. 4 *Burn's*, 208.

Parents may prove that they were never married. *Id.* 243.

2. Settlement by Birth of Legitimate Children.

THE father's settlement is the settlement of a legitimate child, when it can be found out ; otherwise the birth of the child, *prima facie*, is the settlement of the child, until there is another settlement found out. If the mother of a child born in one parish, die in another parish, while passing to a third, such child shall be settled where it was born, and not in the parish where it was left destitute by the death of the mother. Where a child is first known to be, that place must provide for it till they find another. 4 *Burn's*, 210-11.

To prove a marriage, in order to show the legitimacy of children, the register of the marriage and proof of identity will be sufficient. The parents may be examined as to the legitimacy of their children, and their declarations on that subject will be evidence after their death. *Id.* 242.

2. *Of Settlement by Apprenticeship.*

By the English Statutes relative to obtaining a settlement by serving an apprenticeship, it is requisite that the service should be under an Indenture, but as our Statute already recited, says nothing about the binding, but uses only these general words—"or have served an apprenticeship," it seems clear, that a settlement may be gained by such service, whether it was under a deed or otherwise. The question indeed as to this kind of settlement, seems to depend altogether on the service.

Infant.

An infant may bind himself, and a service under such binding will gain him a settlement. An infant of eight years old may bind himself. Unfitness is a matter to be determined by the Sessions, on evidence. Service with a master, who is also an infant at the time of binding, will gain a settlement.

Condition of the Master.

The condition of the master is immaterial. A female may be bound apprentice by the parish to learn housewifery, and it will be good, unless it be found to be fraudulent. If an apprentice be bound to a master who has no right to take an apprentice, yet a settlement will be gained by service under such a binding. The apprentice will gain a settlement in the parish where he serves, although his master have no settlement there. 4 *Burn's*, 379.

Service.

It seems evident from the words used in our Statute, that there must be a service for the whole term agreed on for the apprenticeship, and also that such service must be within the township, otherwise a settlement cannot be gained by it.

Residence.

The residence is considered to be where the party lodges at night, even where the service by day is always in another township. Where the service is on board of ship, the residence is held to be at the ship's proper home, and the settlement is gained there. See 4 *Burn's*, 402.

Place of Service.

An apprentice bound to a person in one township, with intent to serve one in another township, is settled in the place where the service is. The same where an apprentice, by a verbal consent of his original master, serves a person in another township.

Service with a second or third Master.

A settlement is gained by a service with a third master, under the express consent of the second, to whom the first had assigned the apprentice. There must be by the master an express consent to serve a particular person; mere knowledge is not enough, nor a general license to serve whom the apprentice chooses. The consent of the first master may be implied from circumstances. Where the parties act under the idea that the indentures are at an end, no settlement can be gained as an apprentice under them.

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If an apprentice be by parol transferred by the widow of his master, (she not having taken out letters of administration,) service with the second master will be a service under the indenture. So he may continue to serve under an indenture, by leave of the executor, and will gain a settlement thereby. An apprentice, assigned, by indorsement on the indenture, to a second master, gains a settlement by serving him.

Indentures being exchanged between the master and apprentice, the apprentice cannot afterwards gain a settlement under them by serving another master, with the knowledge of the first, for exchanging the indentures is a virtual cancelling of them. But an apprentice agreeing with his master for his discharge, and quitting him, but leaving the indentures till the money agreed for is paid, the indentures are not thereby discharged, and service under a second master by the express consent of the first is a service under the indentures, and gains a settlement. 4 *Burn's*, 411 to 430.

Cancelling
Indentures.

Where the indenture of a parish apprentice is delivered up by the first master to the father of the apprentice, and at the same time the master consents to the apprentice serving a second master, as being turned over to him, such service gains a settlement. The master of a parish apprentice merely agreeing that the apprentice shall work for his own benefit, doth not imply giving up the indenture. A parish apprentice when under age cannot consent to his discharge. Delivering up the indentures to a parish apprentice when he is under age, does not discharge the apprenticeship, although service elsewhere afterwards, will not be considered as service under the indenture so as to gain a settlement. A boy bound out as a parish apprentice, may, after his master's death, hire himself as a servant. 4 *Burn's*, 434 to 439.

If an indenture of apprenticeship be lost, other evidence may be received of its contents and existence. But it must most clearly be shown that it is lost. *Id.* 441.

[For the evidence relative to indentures and other written instruments, generally, see Title,—Evidence.]

3. Of Settlement by Hiring and Service.

By the 57 G. 3, c. 9. 3 V. 9, relating to a settlement by hiring and service, and made in amendment of the before recited Act of the 10 G. 3, c. 1, it is enacted,—“That to entitle a pauper of that description to a settlement, he or she shall have lived as an hired servant for one whole year, under an agreement to serve one whole year next before such person's application for relief.” *Perpetual*.

There are several particulars which by the laws of England are requisite, to constitute such a hiring and service for a year as will gain a settlement, which, according to the words of our Statute, it is conceived are not essential for that purpose. The following may be mentioned as the principal points of such difference on the subject. By the express words of the English Statutes, no married man can by that method obtain a settlement, whereas our Act makes no such distinction. According to those Statutes, the case is the same with regard to married women,—a child under age living with its parents as part of the family,—or any other person under a legal disability to enter into a contract, by reason of the words “lawfully hired” being used in those Statutes; but as our Act, contains merely these words,—“or have lived as an hired servant,” it would seem that hereby the ability to contract is not essential, but that the stress is intended to be placed, merely on the service; and therefore that these last mentioned persons may obtain a settlement by such hiring and service. This point, however, may probably be thought somewhat doubtful, and as yet to be set at rest by an express decision in the higher Court.

The following points which have been established by decisions upon the English laws on this subject, seem to apply as authorities in cases arising under our Statutes.

Points as to
parties, hiring
and service.

As to the parties, it seems clear, that no nearness of relationship will prevent the gaining a settlement by hiring and service. A daughter who is emancipated may be hired as a yearly servant by her father. The master need not have a settlement of his own. One person may also, by the authority of another, contract for that other. And a settlement may be gained by a hiring to, and serving two joint tenants. The master need not live in the parish where the servant serves. And an infant may hire himself. A parish pauper, hired out by parish officers, cannot by such hiring, and service under it, gain a settlement. Compulsory hiring, and service under it, gains no settlement.

Contract of
hiring.

There must be a contract. Where it appears that there was no contract, no hiring will be presumed, and no settlement can be gained; but where a contract appears, it will be presumed to have been regular till the contrary appears. If it be proved that a person was seen and known to be in the service of another as servant in husbandry for a year, a yearly hiring will be presumed. Also, if a person remain in service after the expiration of the first year, a yearly hiring may be presumed, commencing with the second year. A retrospective hiring is not sufficient to gain a settlement. A hiring for a year may be presumed from a service for four years. A hiring

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by indenture, executed by the servant, but not executed by the master, if there be a service in pursuance of it for a year, will gain a settlement. If a person be only hired for less than a year, and serve for three years, a contract for a year may be inferred. The yearly hiring must be by one entire contract, and there must be one entire service. One that serves by the week, or by the month, or any other parts of a year, though he serve for the whole year, cannot thereby gain a settlement. For such a term as a year, it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable. Where there is a general hiring, and no time mentioned, it implies a hiring for a year. Where no mention is made of wages, or of time, and the service is for a year, a hiring for a year is presumed. Where the pauper agrees to go and live with one for a particular purpose, and is to receive clothes, &c., but no time is mentioned, and she remains two years and a half, going away in the middle of a year, a yearly hiring is presumed. Hiring for fifty-two weeks is not a hiring for a year.

If an emancipated person go to her father for a year, "to do the offices of a servant," it is a good hiring for a year, although it is agreed that she may earn what she can by her own labour besides. The contract may be for the servant to work for himself, provided he be bound to do all his master's work.

If a person go to live with a relation, "as such, and not under any hiring," and afterwards go to live with him *as before*, this is no hiring for a year. A person's agreeing to live with his stepfather, to work with him, and to be paid at a certain rate for what he should do, is not a general hiring for a year. 4 *Burn's*, 266 to 284.

Hiring for a year, to spin yarn at so much per stone, will gain a settlement.

If one agree to serve another for three years, to be taught a trade, and contract to do any work he may be set about, it is a good yearly hiring, and a settlement will be gained by a service under it for a year or more. *Id.* 284—5.

Hiring for eleven months, gains no settlement, although it was so limited for the purpose of avoiding gaining a settlement.

Hiring for a year, with liberty to be absent during the harvest month, gains no settlement; not even where it is stipulated that the month shall be made up immediately at the end of the year. *Id.* 294.

A hiring for a year, to work a certain stipulated number of hours each day, will not gain a settlement. A hiring at so much per week, is not a general hiring, and therefore for a

Service without hiring.

Hiring with leave of absence.

Hiring, with stipulations as to working-hours, wages, &c.

year ; but if there be any thing in the contract to shew that the hiring was intended to be for a year, there, a reservation of weekly wages will not control that hiring. A hiring at so much a week for as long a time as the master and servant could agree, is only a weekly hiring, and no settlement can be gained by a service under it for a year or more.

A hiring by the month, at a month's wages, or a month's warning, will not be a yearly hiring. But a hiring at so much per week, and liberty to part on a month's notice, is a general hiring, and a service under it for a year will gain a settlement. A hiring conditional as to liking, if the service continue, is a good hiring for a year.

Retrospective hiring.

Hiring for a year, part of which was then past, gains no settlement. A retrospective hiring is not sufficient for the purpose.

Service under several hirings.

Where a servant was hired for half a year, which time she served, and then was hired for a year, and served half of that, it was held that she gained a settlement.

Where there is a hiring for a year, and a continued service for a year, though part of it is under another hiring, a settlement will be gained.

If the master let his farm, and the lessee enter, and the servant continue with him by his master's desire for the remainder of his year, it will give him a settlement. So if the servant continue with an executor for the remainder of the year. *4 Burn's, 300 to 327.*

Absence or illness of servant.

If a servant absent himself against his master's leave, and his master receive him again, it is no interruption of the service. A servant while ill is still under the service of his master, and it is not such an interruption as to prevent a settlement. Service with other masters, by the first master's consent, he taking him again, is service under a dispensation, and will not prevent a settlement being gained.

Dissolution of Contract.

If a master insist upon turning his servant away, and lay down his wages, which the servant takes up, and then goes away, it is a dissolution of the contract, and no settlement can be gained, though he afterwards return at the request of his master and serve out the year and receive his full wages.

If after a hiring for a year, a servant be taken ill and receive voluntarily his whole year's wages, and leave his service, and go to the hospital, and never return, it is a dissolution of the contract.

Where a master consents to his servant's leaving his service two days before the end of his year, and pays him his full wages, it is a dissolution, and no settlement is gained.

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The distinction between the different cases upon this subject is this ;—if the servant be absent from the service with the concurrence, remaining however subject to the control of the master, he may acquire a settlement, because this only amounts to a dispensation with his service ; but if the master has once parted with his control over the servant, there no settlement is gained, and the receiving the whole year's wages does not make any difference. 4 *Burn's*, 327 to 354.

Distinction between a dispensation of the service, and a dissolution of the Contract.

The residence of the servant is in the place where he lodges at night, and the settlement will be there. The service may be in a parish where the master never lives, and a settlement will be gained there. The servant need not lodge in his master's house. *Id.* 360 to 368.

Residence of the Servant.

[It will be observed that the Statute expressly requires, that the year of the service shall be the year "next before," that is,—*immediately preceding*, "the person's application for relief;" consequently it seems evident, that a year's hiring and service for any previous period will not be sufficient to gain a settlement.]

4. Of Settlement by serving an Office.

Or have executed some public annual office.] By these words of the Statute, it is plain, that serving in any of the county or township offices to which persons are annually appointed in the Sessions, or otherwise, under the Statutes for that purpose, will gain a settlement.

It need not be a *township office*, but it must be a *public annual office in the township*. 4 *Burn's*, 540.

A situation to which a person is appointed by a contract with parish officers, who by Statute have authority for the purpose, is not a public office, and no settlement can be gained by a service in such situation. *Id.*

The office must be executed for the space of a whole year at one time, serving part of a year at one period, and such time at another as makes up a year in the whole, will not be sufficient. *Id.* 549.

5. Of Settlement by paying Taxes.

[Or shall have been assessed, and paid his or her share of the taxes for the poor of such place, or any public taxes, during one whole year, at one time.] Although the rate be in form, or in the manner of making it, not strictly legal, but void, yet if the party be rated, and pay to such a rate, he shall gain a settlement. But if a person's name be inserted

in a rate *after* payment, it is not such a rating as will gain a settlement.

The *person paying* must also be the *person rated*, for there must be both a rate made *upon*, and payment *by* the person claiming a settlement. The rate itself must be produced as evidence of being charged. A landlord refunding to the tenant the amount of the tax paid, does not prevent the gaining a settlement.

A church rate is a public tax.

A rate made too narrowly is a good rate for the purposes of a settlement. 4 *Burn's*, 551 to 557.

6. Of Settlement by Parentage ; and herein of Emancipation.

By Sec. 7 of the before recited Act of the 10 G. 3, c. 1, "In case of the death of the parents of any child or children, who have gained a settlement in any township as aforesaid, all and every such child or children shall be supported by such town or township wherein the parents so gained a settlement."

The cases herein before mentioned, of the settlement by birth of legitimate children, are founded on the fact of the parent's settlement being unknown. If, however, the father's last place of settlement be known, that is the legal place of settlement of his children, and they will take successively, every settlement which the father may from time to time acquire. His last settlement being always *their settlement*, until they have acquired one by their own act, or are emancipated. And this rule holds good, wherever the father may be, or wherever he may die.

Children of
Vagrants.

A legitimate child born, or a child dropped in a place where a person is vagrant, gains no settlement by being dropped ; but where the father was last legally settled.

A child after seven years of age is capable of acquiring a settlement of its own, distinct from its parents, but before that age a legitimate child shall necessarily follow the settlement of its parents, as a nurse child, or as part of the family ; and after that age it shall not be removed as part of the father's family, but with an adjudication of the place of its own last legal settlement, as being deemed capable after that age of having gained a settlement of its own. Proof of the father's settlement is sufficient to establish the settlement of the son, if nothing appear to the contrary.

If the father die before the child is born, yet the child is settled where the father was settled before his death.

The children shall have the father's settlement derived from their grandmother, in preference to the settlement of their mother. 4 *Burn's*, 212 to 217.

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Where the father, having no known settlement, runs away, the children shall be settled where the mother was settled before her marriage. The same is the case where the father is a foreigner and has no settlement.

Father running away.
Foreigner.

The father being dead and the mother a widow, the children will follow her settlement acquired after his death. Intermarrying with a second husband will not change the settlement of the children by the first marriage; but they will have the last settlement of the father, if he had one, but if he had none, then the last settlement of the mother, whether before her marriage or while a widow. *Id.* 217 to 219.

Where Children shall have the Mother's Settlement.

A son at nineteen, leaving his father and going into another parish, and marrying, is emancipated; and his children can derive no settlement from their grandfather. Marriage by the son, is of itself an emancipation, although he continue to reside with his father's family. But where a son does not marry, his carrying on a business for himself will not constitute an emancipation, if he live with his father's widow as part of her family.

Emancipation.

A son is not emancipated by the circumstance of his being under some other control than that of his father.

A child is not emancipated until he has gained a settlement in his own right, or has contracted a relation incompatible with that of a component part of his father's family; and therefore a person at the age of nineteen, (his father having run away,) hiring himself for four years and not gaining a settlement thereby, is not emancipated, but is entitled to his father's settlement. 4 *Burn's*, 220 to 228.

7. Settlement by Marriage.

RESPECTING the mode of gaining a derivative settlement by marriage, it seems to be a good general rule, that a woman marrying a man who hath a known settlement, shall follow the husband's settlement, though she never lived with him there.

A wife can gain no settlement separate and distinct from her husband, during the coverture.

The husband being dead and his place of settlement not known, the wife's maiden settlement remains. The same after the death of a husband who was a foreigner. If the husband be living, but have no known settlement, the wife may be removed to her maiden settlement. Where the husband having no settlement, runs away or is absent from the country, the wife's maiden settlement remains. A woman does not lose her maiden settlement by marrying a man who has none; but her own settlement will continue until she get another. A settlement is a permanent thing, and in all cases lasts during life,

Proof of Marriage.

or until a new one is gained. No person can discharge his own settlement sooner, or by any other means. 4. *Burn's*, 236 to 241.

In order to show a marriage, it is not necessary to prove a publication of banns, but it is enough for one present at the ceremony to prove the fact of marriage. Nor is it necessary to produce the copy of the register. *Id.* 253.

In all cases, except of prosecution for bigamy, and actions for crim. con., reputation is good proof of marriage, where direct proof cannot be obtained.

A mother may be called to prove that she was never married to a person with whom she cohabited, and who was reputed her husband, though by such evidence she bastardize her issue. *Id.* 256 to 258.

8. *Of Removals ; and herein,*

1. *Who may and who may not be Removed.*
2. *Of the Declaration and Examination as to place of Settlement.*
3. *Of the Warrant or Order for Removal.*
4. *Of an Appeal against the same.*

1. *Who may and who may not be removed.*

[*Who shall apply to the Overseers for relief, not having obtained a lawful settlement in the township.*] From these words of the before recited Statute of the 10 G. 3, c. 1, concerning settlements, and from the further words, "*have become chargeable,*" contained in the same clause, it is evident that no person can be removed from any township before applying for relief, and becoming actually chargeable to such township, and also that no such person can be removed, whose lawful settlement, being his last one, is then in such township. It now remains to consider what individuals, by reason of certain other existing circumstances, are not removable.

A township in which the last legal settlement is claimed, ceasing to have Overseers, a removal cannot be made thither, nor to any other township.

A wife residing with her husband cannot be removed from him ; but if not residing with him, she may be removed to her last legal settlement, being that of her husband.

The wife and children of a foreigner cannot, when they become chargeable, be removed from him to the wife's parish. The wife may be removed without her husband, (he having no settlement,) if they consent to it.

A servant cannot, on the complaint of the parish officers, be removed from his master. 4 Burn's, 598 to 606.

2. *Of the Declaration and Examination as to Place of Settlement.*

[*Shall be required to declare on Oath before one Justice, his, her, or their last place of residence, and if they are found to have gained any lawful Settlement within this Province.*]

The Statute does not mention by whom, or on whose complaint the pauper shall be required to make the declaration, but it would seem that it must be understood to be on the requisition or complaint of the Overseers of the township. Neither is it expressly said that the Justice is to make any examination, or to receive or hear any proof as to the settlement of the pauper, but yet as it is declared, that if the pauper is "*found* to have gained any lawful settlement within the Province, a copy of his declaration, and the amount of expenses incurred, shall be certified and transmitted to the Overseer of the township to which he belongs," it seems sufficiently evident that the Justice is empowered, and indeed that it is his duty, to make a full and particular investigation into the subject, by such proof as may be produced, otherwise the desired purpose,—that of ascertaining the last and lawful settlement of the pauper, could not be satisfactorily, if at all accomplished. The declaration of the pauper must of course be taken in writing, and, as required by the Act, a copy thereof, attested by the Overseers of the place where he made the application, and certified by the Justice, with the amount of the expense incurred in relieving him, must be transmitted to the Overseers of the township to which it has been ascertained the pauper belongs. The same Justice who took the declaration must be the one who certifies the said copy thereof.

An examination of a pauper for the purpose of removal is not evidence upon an appeal against that order of removal, though the pauper cannot be found. Neither the *hearsay* of a pauper who is dead, nor his *ex parte examination in writing*, taken on oath before Justices, touching his settlement, are admissible evidence of such settlement. 4 Burn's, 630.

For the Form of the pauper's declaration, on oath before the Justice, see at the end of the Title.

3. *Of the Warrant or Order for Removal.*

[*It shall be lawful for any two Justices of the Peace where such person or persons have become chargeable, by a*

warrant under their hands and seals, to cause him, her, or them, to be removed to the township where they last obtained a lawful settlement.] By the express words of the Statute, this warrant of the Justices cannot be issued until after the Overseers of the place, to which the before mentioned declaration of the pauper has been transmitted, have neglected to remove him, and to pay the expenses incurred for his relief. As nothing is said in the Act respecting any examination by the two Justices, relative to the pauper's settlement, it may seem doubtful whether they are authorized, or it is requisite for them to make any examination, or receive any proof on the subject, or whether, merely by virtue of the previous proceedings before the single Justice, they are peremptorily to issue their warrant for the removal of the pauper to that township to which his declaration was transmitted as aforesaid. However, as no reference is made to any previous adjudication or decision on the point, but the Justices are directed to remove him "to the township where he last obtained a lawful settlement," it would rather seem, that they may and should investigate and examine, in order to ascertain and determine such lawful settlement.

The warrant is to be executed by the Overseers of the removing township, and therefore it must be directed to them. The Justices ought to be both together at the hearing and determining as to the removal.

The pauper must be named in the warrant, if known, or if unknown, he must be stated to be so. A warrant to remove a man and *his family*, is not good, because too general, for some of the family might not be removable. Children should be described in the warrant by their names and ages. The warrant must contain an express adjudication as to the place of lawful settlement. It must also state that the pauper is actually chargeable to the place from whence he is removed. The examination must be by the same Justices who remove.

The pauper himself ought to be heard before he be removed, for he may shew sufficient cause why he ought not to be removed, especially as he himself, perhaps, by the removal, is likely to be the greatest sufferer, and therefore natural justice requires that he be not condemned unheard. An order of removal, though to a wrong place, is conclusive, if not appealed against. 4 *Burn's*, 616 to 633.

For the Form of a warrant to remove, see at the end of the Title.

4. Of Appeal against the Order of Removal.

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shall think themselves aggrieved.] The pauper himself may appeal, as well as the township to which he is removed. 4 Burn's, 652.

May appeal for redress to the next General or Quarter Sessions of the Peace, held for the county wherein such town or township shall be, or wherein such person or persons shall reside.] It is plain from these words of the Statute, that where the removal is to a place in another county, the appeal must be to the Sessions in such county, and not in the county from whence the removal was made. Our Statute is different on this point from the English Statutes, by which latter the appeal is to be, to the Sessions in the county wherein the removal took place.

The appeal must be to the *next Sessions* after the removal. By the *next Sessions*, is meant the next possible or practicable Sessions for entering such appeal. 4 Burn's, 657.

NOTE. Our Act does not require any notice of appeal to be given. In this respect also, it is different from the English Statutes. It is certainly reasonable however, that such notice should be given, as well as expedient, as the inconvenience of delay will be thereby prevented, and moreover it may probably be held to be requisite.

An order, not appealed against, is final; and there can be no second order reversing the first, excepting by appeal. But an order may be deserted and given up by consent, without appealing; and in such case a second order may be made for removal to another township.

An order of removal, unappealed against, is conclusive of the facts stated in it.

So an order confirmed upon the appeal, is final and conclusive; but an order discharged binds only the parties.

An order quashed for want of form only, is not conclusive.

The Sessions cannot make an original order of removal, but must either quash or affirm. 4 Burn's, 663 to 675.

NOTE. All the authorities herein before cited, where the word "parish" is used, will equally apply to a township or settlement, having Overseers.

By the 3 W. 4, c. 42. 4 V. 221, "If the Justices at their General Quarter Sessions, upon an appeal before them concerning the settlement of any poor person, determine in favour of the appellant, they shall, at the same or other Gene-

ral Quarter Sessions, award to such appellant so much money as shall appear to them to have been reasonably paid, or to be due from the place on whose behalf such appeal was made, towards the relief of such poor person, between the time of the undue removal, and the determination of such appeal; the money so awarded to be recovered as hereinafter mentioned.

Sec. 2. The Sessions, upon any appeal concerning the settlement of any person, or upon proof of notice given of an appeal, which was not prosecuted, shall allow to the party succeeding in the appeal, or to whom such notice was given, such costs as the Sessions shall think reasonable and just, to be taxed according to the rates fixed by law for costs in the Supreme Court, to be paid by the Overseers or others against whom the appeal was determined, or who gave such notice of appeal.

Sec. 3. If the Overseers, or others so ordered to pay such costs, shall, after service of the order of the Sessions in that respect, neglect or refuse to pay the same, the party in whose favour such costs were awarded, may sue for and recover the same in the Supreme or Inferior Court, or before a Justice or Justices, as for any debt of the like amount, and the production and proof of a copy of such order of the Sessions, and of the service thereof, on the party or parties upon or against whom such order was made, shall be sufficient proof of the said debt. *Temporary.*

Form of the Examination of a Pauper, where the Settlement is by Hiring and Service.

County of } THE examination of C. D., at present residing in the township of — in the said county to wit. } of —, labourer, touching the place of his last legal settlement, taken upon oath before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, the — day of —, in the year of our Lord one thousand eight hundred and —.

Who upon his oath declareth and saith, that a little more than a year ago, he hired himself to one E. F., of the township of — in the county of —, farmer, to serve him in husbandry for one year, at the wages of —, and that he served his said master under that hiring one whole year, in the said township of — in the county aforesaid, that is to say, from the — day of —, in the year —, to the — day of — last, in the present year, and received a full year's wages; and that he was lawfully married to Mary his present wife, by whom he has one child, namely George, aged nine

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months, and that his said wife and child are now living with him ; and that he and they also are now actually chargeable to the said township of —, in the said county of —.

Taken and sworn before me, }
the day and year first above written, } C. D.
A. M., J. P.

Form of the Examination where the settlement is by Birth.

County of } THE examination of C. D., at present residing in the township of — in the said county to wit. } of —, labourer, touching the place of his last legal settlement, taken upon oath before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, the — day of —, in the year of our Lord —.

Who upon his oath declareth and saith, that he is about — years of age, and was born, as he hath been informed and verily believes, in the township of — in the county of — where his father and mother were settled inhabitants. And this examinant saith, that he hath never to the best of his knowledge and belief, done any act whereby to gain himself a settlement in any other place than the said township of —, and that on or about the — day of —, in the year — he was lawfully married to Sarah, his present wife, by whom he has two children, namely, Sarah aged — years, and William aged — months or thereabouts ; and that his said wife and children are living with him, and that he and they are now actually chargeable to the said township of — in the said county of —.

Taken and sworn before me, }
the day and year first above written. } C. D.
A. M., J. P.

If it appear that the last lawful settlement is by apprenticeship,—serving an office,—or in any of the other methods, the examination must be filled up accordingly, stating the facts of the case. The foregoing Forms, with the slight alterations obviously requisite, will also serve in the case of the examination taken before the two Justices, previous to their issuing the warrant or order of removal.

The Form of a General Warrant or order of Removal.

County of } To the Overseers of the poor of the township of Wilmot, in the said county of Annapolis, }
[Seal.] and to the Overseers of the poor of the township of Falmouth, in the county of Hants, and to }
[Seal.] each and every of them.

UPON the application and complaint of the Overseers of the poor of the said township of Wilmot, in the county of Annapolis aforesaid, unto us whose names are hereunto set and seals affixed, being two of His Majesty's Justices of the Peace in and for the said county of Annapolis, that John Thompson, Mary his wife, Thomas their son, aged eight years, and Agnes their daughter, aged four years, have come to inhabit in the said township of Wilmot, not having gained a legal settlement there, and that the said John Thompson, Mary his wife, and Thomas and Agnes their children, are actually chargeable to the said township of Wilmot. We the said Justices, upon due proof made thereof, as well upon examination of the said John Thompson upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge that the lawful settlement of them the said John Thompson, Mary his wife, and Thomas and Agnes their children, is in the said township of Falmouth, in the said county of Hants. We do therefore require you, the Overseers of the poor of the said township of Wilmot, or some or one of you, to convey or cause to be conveyed the said John Thompson, Mary his wife, and Thomas and Agnes their children, from and out of the said township of Wilmot, to the said township of Falmouth, and them to deliver to the Overseers of the poor, there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; and we do also hereby require you the said Overseers of the poor of the said township of Falmouth, to receive and provide for them as inhabitants of your township. Given under our hands and seals at Wilmot aforesaid, the — day of — in the year of our Lord —

A. M., J. P.

A. R., J. P.

POUNDS.

By the 40 G. 3, c. 7. 1 V. 424, "The Grand Juries in the General Sessions in the several counties, shall from time to time present the number of pounds requisite in each township, and the Justices in Sessions shall appoint a commissioner to contract for, and to see to the erection of such pounds; and when completed they shall be reported to the Sessions for approval. On the neglect of the Grand Jury to present the sums necessary to defray the expense of erecting such pounds,

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the Justices in Sessions may amerce the several townships in such requisite sums, and the same shall be assessed on such townships, and be collected and levied in the same manner as county charges." *Perpetual.*

PROCESS, see,—SUMMONS and WARRANT.

PROMISSORY NOTES, see,—BILLS and NOTES.

PUBLIC GROUNDS.

By the 4 W. 4, c. 12. 4 V. 263, it is enacted, "That the General Sessions shall appoint three supervisors within every township, to take charge of all public landings, and public grounds within every such township respectively, for the regulation of which, provision has not already been made, and to preserve the same, and remove incumbrances therefrom, and to prosecute persons who shall encroach on, or injure the same.

Sec. 3. Where there shall be an encroachment on any road within a township for which such supervisors have been so appointed, and the lands on the opposite sides of such road are owned by different proprietors, and any doubt or dispute shall arise as to the true line of the road on which such encroachment shall appear to have been made, or as to which of the two sides of the said road is or may be encroached upon, it shall be lawful for the said supervisors, or the major part of them, after due notice given to all parties interested in the said dispute, of the time and place of holding such investigation and enquiry, to repair to the place where such encroachment may be alleged to exist, and there to enquire into the facts relating to such encroachment, and by survey or otherwise, upon evidence of witnesses to be sworn and examined by such supervisors, or the major part of them, who are hereby authorised to administer oath to the said witnesses, to ascertain and settle the true and correct line of the road in question, and to determine upon which side thereof the said encroachment may have been made, and to order, direct, and cause, the fences, walls, and enclosures, or other encroachments, of any person or persons who may have encroached upon such road, to be moved or altered accordingly.

Encroachments on Roads.

Overseers of the county of Hereunto set of the the, that John aged eight have come having gained Thompson, children, are ac- ot. We the well upon ex- h, as other- the premises, wise adjudge n Thompson, children, is in ty of Hants : ne poor of the u, to convey on, Mary his m and out of nship of Fal- of the poor, with this our e shewing to e you the said Falmouth, to our township. resaid, the —

J. P.
J. P.

Grand Juries in hall from time in each town- a commission- such pounds ; e Sessions for to present the such pounds.

Penalties for
Encroach-
ments.

Sec. 4. If any person shall neglect or refuse to remove or alter his, her, or their fence or enclosure, or other encroachment within the time he, she, or they may be required so to do, by the order and direction of the said supervisors, or the major part of them, such person or persons shall forfeit and pay a fine or penalty of twenty shillings, to be sued for and recovered by the said supervisors, or by any person who will sue for the same, in the same manner as debts of the like amount are by law recoverable, and to be paid and applied, one half to the person who shall sue for the same, and the other half to the Surveyors or Commissioners of Highways for such township; to be applied for the improvement of the roads therein. And if such encroachment shall be suffered to remain and continue for twenty days after such fine or penalty imposed and sued for, such continuance shall be deemed and taken to be a new offence, and shall subject the party or parties continuing such encroachments, or suffering the same to continue, to the like fine as aforesaid, and so in like manner shall every further continuance of such encroachment for the further space of twenty days, be deemed and taken to be a new encroachment.

Expenses of
proceedings
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croachments.

Sec. 5. The said supervisors or the major part of them shall apportion and order the payment of all costs, charges, and expences attending and incident upon the said proceedings, upon such persons, and in such manner and proportions as to the said supervisors or the major part of them shall appear expedient and advisable; and the same shall be recoverable and recovered by suit as for debts of the like amount as such costs or the respective apportionments thereof may be.

Copy of order
of Supervisors
to be evi-
dence.

Sec. 6. In any action either for the penalty, or costs aforesaid, the production of a copy of any such order made in writing under the hands of the said supervisors or the major part of them, and due proof made of their hand writing, shall be good and sufficient evidence of such order, and shall be sufficient to establish the claim of any person or persons to the amount of costs awarded to him or them.

Appeal.

Sec. 7. If any person shall be dissatisfied with the order of the said supervisors, it shall be lawful for such person to appeal from such order to the next Sessions of the Supreme Court, or General Sessions of the Peace, at the option of the party so appealing, where the matters in dispute shall be tried and determined by the verdict of a Jury; provided always, that pending any such appeal the fence or other encroachment shall not until the determination of such appeal be removed or altered, as ordered by the said supervisors." *Temporary.*

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Act, are directed to be recovered in the same manner as debts of the like amount; it follows that where the same do not exceed three pounds, they must be sued for before one Justice, and above that amount, but not exceeding five pounds, before two Justices; the proceedings and Forms in which suits will be found under the Title,—Summary Trials.

QUAKERS, see OATHS.

R A P E.

R A P E is when a man hath carnal knowledge of a woman by force, and against her will. The offence is no way mitigated by shewing that the woman at last yielded to the violence, if such her consent were forced by fear of death, or of duress. Also, it is not a sufficient excuse in the ravisher to prove that the woman is a common strumpet, for she is still under the protection of the law, and may not be forced. Nor is it any excuse that she consented after the fact. The party ravished may give evidence on oath, and is in law a competent witness, but the credibility of her testimony, and how far she is to be believed, must be left to the Jury. All who were present and actually assist a man to commit a rape, may be indicted as principal offenders, whether they be men or women. 5 *Burn's*, 1-5.

By the 32 G. 2, c. 13, § 7. 1 V. 16, If any person or persons shall by force, and against the consent of any woman, or infant above the age of twelve years, have carnal knowledge of her body, every such offender or offenders shall, on due conviction of such ravishment, suffer as a felon without benefit of clergy. Provided always, that if complaint shall not be made of a ravishment within ten days afterwards, before one of His Majesty's Justices of the Peace, or other Magistrate, that then such fact shall be adjudged to have been committed by and with the consent of such woman or infant.

Sec. 8. If any person shall unlawfully have carnal knowledge of any female child under the age of twelve years, though with her consent, every such unlawful and carnal knowledge shall be felony, and the offender being thereof duly convicted, shall suffer as a felon without benefit of clergy. And every violent assault and battery committed on the body of such woman or infant, with intent to ravish, shall be punished by

Rape on a
Child under
twelve years.

Assault with
intent to com-
mit a Rape.

adjudging the offender or offenders, upon due conviction thereof, to stand in the pillory, and the Judge or Judges of the Court wherein he shall be so convicted, may for further punishment fine and imprison, and require sureties, for the good behaviour, at his or their discretion. *Perpetual.*

Directions.

The proceedings on complaints of rape will be the same as in other cases of capital felonies, and will be found, together with the requisite Forms, under the respective Titles,—Information ; Warrant ; Examination ; Commitment.

Justices of the Peace cannot bail for this crime, but after taking the examinations as by law required, must commit the party to gaol, and send the examinations in to the Supreme Court, in the usual manner. If the complaint is only for an assault with intent to commit a rape, the party may be bailed by sufficient sureties, and may be tried in the Sessions.



RATES.

THIS very important title has reference solely to the rates made for defraying the county and district charges, and it will be treated of in the following order :

- I. OF THE PURPOSES FOR WHICH RATES MAY BE MADE AND LEVIED.
 - II. OF APPOINTING ASSESSORS AND COLLECTORS.
 - III. OF MAKING THE ASSESSMENT : AND HEREIN OF THE PERSONS AND PROPERTY LIABLE TO BE RATED.
 - IV. COLLECTION OF RATES AND PROSECUTIONS FOR THE SAME.
 - V. OF APPEALS.
 - VI. EXPENDITURE OF THE MONEY RAISED.
 - VII. RECOVERY OF PENALTIES.
 - VIII. OTHER MATTERS RELATING TO RATES.
- I. OF THE PURPOSES FOR WHICH RATES MAY BE MADE AND LEVIED.

By the 5 W. 4, c. 13. 4 V. 385, The Grand Jury in the General Sessions may present sums of money to be raised for the following purposes ;—for building or repairing a county or district gaol, or the appurtenances thereof, or of a Court or Session House ; and for providing fuel for the use of

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the same ; erecting or repairing stocks, pillories or pounds ; and providing bolts, bars and shackles ; also for the conveying persons accused of any treason, or other criminal offence, to the county or district gaol, being the distance of three miles or upwards, and so as the same do not exceed six pence per mile ; also for the support of poor criminals, or other poor persons in gaol ; also for paying a salary to the treasurer of the county or district for his services in that station ; also for paying the Clerk of the Peace such annual sum, not less than twenty pounds, as shall be presented by the Grand Jury, and approved of by the Court of General Sessions, and be deemed necessary for the payment of such of his services in that office for which no provision is otherwise made ; also, (except in the county of Halifax,) to defray the charges of prosecuting in any Court of Sessions of the Peace, persons charged with larcenies, or other criminal offences or misdemeanors, (except for assault and battery only,) in cases where such proceedings shall be conducted by counsel, and wherein the Court shall tax and allow the said charges and direct them to be paid under this Act, but not to exceed two-pounds six shilings and eight pence in any one case ; also towards the maintenance and support of a gaoler ; also to pay the crier of the several courts held in the county or district, such annual sum as may by the Court of General Sessions be deemed necessary for payment of his services in that situation ; also to defray the expenses of poor witnesses on the trial, in any Court, of persons accused of any grand or petit larceny, or other criminal offence ; the same to be paid pursuant to the provisions of the Provincial Statute 8 & 9 G. 3, chap. 2 ; also for defraying the charges of conveying criminal offenders to the places of labour or confinement, to which they have been sentenced to be conveyed ; also for procuring materials and defraying other expenses which may be necessary for setting persons at work who are confined in any such county or district under sentence to labour ; also to pay any allowance which may be made by the said Court of Sessions to any constables for extraordinary expenses incurred in the execution of their duty, in cases of riot or felony ; also to pay any allowance which may be ordered by the said Court of Sessions to be made to any special constable or constables, for his or their expenses, trouble, and loss of time, in executing or endeavouring to execute any warrant or warrants which such constable or constables have been appointed to execute, or to assist in executing, in any case of felony or misdemeanor ; also for the payment of all such sum or sums of money as may be necessary to be raised, or expenses that may have arisen, for the building or repairing bridges within any such county or district ;

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also to defray the charges and expenses attending the removal of any of the said county or district rates, by certiorari or otherwise, or which may be incurred in prosecuting or defending any action, suit, or proceeding at law respecting the affairs of such county or district; such charges and expenses to be taxed and allowed by the said General Sessions; and also for any expense incurred, or to be incurred in the executing or administering of criminal justice in the county or district."

II. OF APPOINTING ASSESSORS AND COLLECTORS.

By Section 5 of the aforesaid Statute,—The Grand Jury shall present to the Court of General Sessions the names of a certain number of freeholders, out of whom the said Court shall appoint as many as may be deemed proper to be assessors and collectors, of the sums of money mentioned in any presentment which has been confirmed; or where the said Court has ordered any amercement to be made, such Court shall appoint assessors and collectors for the same purpose; and the said assessors and collectors shall in each case aforesaid, be notified of their appointment by the Clerk of the Peace, and shall be sworn by the said Court or by any Justice of the Peace, to the due and faithful execution of their respective offices, and that without favour or affection, hatred or malice, and to the best of their skill and knowledge; and in case any person appointed as assessor or collector as aforesaid, shall die, or remove, or refuse to accept of such office, or neglect to act therein, another person shall immediately be appointed in his stead, by the Court or by any two Justices of the Peace; and any person so refusing or neglecting to act, shall forfeit the sum of five pounds, to be recovered and applied as hereinafter directed.

III. OF MAKING THE ASSESSMENT, AND HEREIN OF THE PERSONS AND PROPERTY LIABLE TO BE RATED.

By Sec. 6 of the same Statute,—“The Justices in General Sessions, by whom any presentment of money shall be confirmed, or amercement shall be made, shall determine and appoint the proportion of the amount thereof which shall be borne by and assessed upon the inhabitants of the several townships, settlements, or places within the county or district in and for which such presentment or amercement was made; and the assessors appointed as aforesaid for such townships, settlements, or places respectively, shall meet together to make such assessment at such time and in such central and

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convenient places as shall be appointed by the Clerk of the Peace for that purpose ; and shall, within twenty days after they have been sworn into office, assess the sums so proportioned upon the inhabitants as aforesaid, in the most just and equal manner they the said assessors can devise, by an equal pound rate on the real and personal property whereof such inhabitants shall be respectively in the occupation or possession within the county ; regard being had to the value of the rents of the real estate, and the capability of the personal estate to produce profit ; in which assessment the said assessors themselves shall be included ; and they the said assessors, within the said twenty days, shall make out and furnish to the Clerk of the Peace of such county or district, rolls of the names of the inhabitants so assessed, specifying opposite to their names, the sums in which they have respectively been assessed, which assessment shall be made, and rolls shall be subscribed by a majority of the said assessors, and every assessor who shall neglect any part of the duty herein required of him, shall forfeit the sum of five pounds, to be recovered, paid over, and applied in the manner hereinafter directed."

Upon the inhabitants of the several townships, settlements, or places.] It appears plain from these words, that only persons having an established or fixed residence within any place are liable to be rated ; and consequently, that merely transient persons, having only a temporary or passing use or occupation of real property, or the possession of personal property, with which they are passing through the place, or having merely the temporary use of it, are not so liable as to either of such descriptions of property. In the case of church rates it has been decided, that the lessee of a stall in a market town, who came there weekly to the market to sell his wares, was not rateable ; and that if a man take up his lodgings for a week in a town, he shall not be so charged. See 4 Burn's, 41.

In the most just and equal manner they can devise, by an equal pound rate.] These words, it is presumed, must mean, that each person included in the rate must be assessed at a certain per centage or proportion on the whole estimated value of all his real and personal property, having reference, in ascertaining and determining the amount he is to be rated, to the whole proportioned sum to be assessed upon the particular township or place, and also, to the estimated amount of the whole property therein liable to be rated. By this mode of proceeding, the proportion of each individual will depend on the estimated value of his said property, and will be ascertained by a simple question in Arithmetic. For instance, if the sum to be raised from any particular township or place be £15,

and the estimated value of all the aforesaid rateable property, within such township or place, be £15,000, and the estimated value of any individual's property, making a part of such whole amount, be £200, the rate to be paid by such individual, will be four shillings. It must be borne in mind, however, that in estimating the value of property, and proportioning the rate, regard must be had, according to the words of the Act, "to the value of the rents of real estate, and to the capability of personal estate to produce profit.

On the real and personal property whereof such inhabitants shall be respectively in the occupation or possession.] One point is made perfectly clear by these words, namely,—that it is only the person having the occupation or possession of property, who is to be rated for it, whether he be possessed of it, as owner, tenant, or otherwise. Concerning the descriptions of property to be rated, the words cited are also so plain, as to real or landed estate, as to require no explanation, and with regard to personal property, they must be understood to include all descriptions of such property of a local, visible nature. According to this conclusion, and also from analogy to the decisions which have taken place with regard to poor rates, it is clear, that salaries, wages, the profits and fees of any profession, as of an attorney, also money vested in the public funds, or out at interest, and the like, are not liable to the county rate. See 4 *Burn's*, 57.

Occupation of
Real property

Questions may arise as to what is to be considered such an occupation of real property by a party as will make him liable to be rated for it, which the following decisions, as to poor and other rates, will probably be thought sufficient to determine. The officer of a college is rateable for the apartment he inhabits in the College. A schoolmaster, occupying a house and garden belonging to the school, is rateable for them, although they are held by him as a recompense for teaching, &c., he being a beneficial occupant. A corporate body are occupiers and inhabitants for the purpose of being rated. If the owner of a house occupy a part thereof only, but his servants occupy other parts, and no one reside in the house but a poor person permitted to do so out of charity, the owner is rateable as occupying the whole. If a party have the use of a building or other subject of the rate, as a mere servant of the Crown, or of any public body, or in any other respect for the mere exercise of public duty therein, and have no beneficial occupation of, or emolument resulting from it in any personal and private respect, then he is not rateable. The property of the Crown, in the *beneficial occupation* of a subject, whether he be a civil or a military officer of the Crown, is

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equally rateable. But if the use of, or residence upon the property, be either as *the servant* of the Crown, and for public purposes only, or as a mere public officer or servant, or of any other description, the parties having the use of the property merely for such purposes, are not rateable, because the occupation is, throughout, that of the public. 4 *Burn's*, 41. to 46.

With regard to the point of *possession* of property, it may be observed, that there are two kinds of possession, one in fact, and the other constructive, or in law; both of which will be found, in nearly every instance, to be included by the before cited words of the Act. As to real property, if there is no person in actual occupation or possession, the owner is still considered in law to have the possession, and therefore, if he derives any rent or profit from the property, in any manner whatever, he will undoubtedly be liable to be rated for it, and even if he do not actually derive any such rent or profit, yet if it be then *capable* of yielding such rent or profit, it would rather seem that the owner is in like manner liable, according to the benefit it is then capable of yielding him. Of personal property, there are also two kinds of possession, actual and constructive. The first requires no explanation. As to the other, goods may for instance be placed by the owner under the care or charge of his servant, or some other, to be managed for him, in which case the owner has a constructive possession of such goods, and is therefore the proper person to be rated for them. The same of the owner of any goods in the actual possession of a carrier, for the mere purpose of conveyance, and in many other similar instances.

Possession of Property.

Within the County.] It will appear from these words, taken in conjunction with the word "inhabitant," previously used in the clause, that a party is to be rated only in the place where he resides, but that he is to be *there* rated for all the real and personal property of which he can be considered to be in the occupation or possession, throughout the county.

Regard being had to the value of the rents of the real estate, and the capability of the personal estate to produce profit.] With regard to the real estate, it would seem from the words here cited, that the amount in rent, which under existing circumstances any such estate, whether lands or houses, may fairly be estimated to yield or command, will, in every such case, be the value or amount of rent to be taken into account in adjusting and making the rate.

By the expressions used concerning personal property, is doubtless to be understood its capability, under the existing circumstances of its possession, of yielding any profit to the possessor; for strictly speaking, personal property of every

description is capable of being so used or employed as to yield a profit. If however, any such property, at the time of making a rate, is held or possessed by the owner under such circumstances that it does not and cannot *then* yield him a profit in any way, he is not at *such time* to be rated for it. Stock in trade, is liable to the county rate, if it be ascertained to be profitable.

IV. COLLECTION OF RATES, AND PROSECUTIONS FOR THE SAME.

By Sec. 7, of the aforesaid Statute, it is enacted,—“That upon the rolls of assessment being received by the Clerk of the Peace, from the assessors, warrants under the hands and seals of any two Justices of the Peace within the county or district, with the said rolls thereto respectively annexed, shall forthwith be issued, directed to the respective collectors, commanding them to collect from the persons named in such rolls, the several sums set opposite to their names respectively; and the said collectors shall immediately proceed to make such collection, and within three months from the time of their receiving such warrants, shall return the same to the said Clerk of the Peace, and shall pay over to the Treasurer of such county or district the sum or sums of money so by them collected; and if any such collector, who has received any such warrant, shall neglect, delay, or refuse to make such collection and payment within the period aforesaid, he shall forfeit and pay the sum of ten pounds, to be prosecuted for and recovered by the said Treasurer in a summary manner, before any two Justices of the Peace, or by bill, plaint, or information in any Court of Record in the Province, by direction of the Court of General Sessions or otherwise, and every collector, who shall have received and shall improperly retain any money by him collected as aforesaid, shall moreover by the direction of the said General Sessions be prosecuted for the same by the said Treasurer, before any such Court of Record, in cases where the sum so improperly retained shall exceed the sum of five pounds, and for any lesser sum, in the same manner that debts of the like amount between party and party are now by law recovered.

Sec. 8. Every person named in any such roll of assessment, who shall neglect or refuse to pay the sum therein specified to be paid by him, her or them, after demand thereof made by the collector as aforesaid, shall and may be prosecuted for the same by the said collector, before any two Justices of the Peace within the county or district; and on judgment being given against such person or persons for the said sum, or any

part thereof, the same shall, by warrant of distress from the said Justices, be forthwith levied by the constable or constables to whom the same is directed, on the goods or chattels of such person or persons, together with the charges of prosecuting and levying for the same; and any overplus, after the sale of such distress at public auction, shall be returned to such person or persons.

Sec. 12. The Court of General Sessions in the several counties and districts, shall establish the rate of commissions to be allowed to the collectors of the said rates, the said commissions, however, not to exceed five pounds for every hundred pounds by them collected."

With regard to the proceedings for enforcing the payment of these rates, it may here be remarked, as has been done concerning poor rates, that the practice which has so generally prevailed,—of issuing and levying a warrant or warrants of distress against parties, without previously summoning them to appear and answer for their alleged default of payment, is altogether unjust and illegal, and renders the persons concerned in making such illegal distress liable to prosecution, and to the payment of damages, by the parties injured. Our former Statute, it is true, did not expressly require that delinquents should be so summoned, but still the common law required it, as being agreeable to reason and justice, but it has been seen that by the express words of one of the foregoing clauses of the present Act, it is required that the parties who have neglected to pay their rates, on demand thereof made, shall be prosecuted, that is, summoned for the same, before judgment can be given against them, or a warrant of distress be issued. The following authorities will abundantly prove, that in all cases such summoning ever has been, and still is, indispensably requisite.

It is reasonable that the party should be heard in his defence, for he may shew cause why a distress should not be granted, as that no demand or refusal had been made, and the like. A summons must precede a warrant of distress, which is in the nature of an execution. On the summons, the party may shew a sufficient reason to the magistrates why a warrant of distress should not issue, as that he has already paid the assessment. But it is an invariable maxim in our law, that no man shall be punished before he has had an opportunity of being heard; whereas if a warrant of distress were to be issued without any previous summons, the party would have no opportunity of shewing cause why the execution should not issue against him. 4 Burn's, 109—110.

It would be strange that a distress should be taken upon a man's goods without hearing him. *Id.* 115.

Concerning
Proceedings
for the reco-
very of Rates.

Summoning
for non-pay-
ment.

In another case given in the same work, one of the Judges said, "No Magistrate can be supposed to be so ignorant as not to know, that it is contrary to justice and reason to condemn a man in any case without giving him an opportunity of being heard in his defence."

Directions.

The demand of payment made by the collector of the rates should be a personal one, if possible, but at least it must be made to appear that the party had notice of such demand before being summoned. When any party refuses or neglects payment, after such demand thereof, the legal and proper course is, for the collector to apply to any two Justices, who, at his request and on his statement, which need not be in writing or on oath, must issue the summons for the delinquent party to appear before them on a subsequent day, allowing a reasonable time. The collector is not obliged to delay doing this, nor should he delay it until after the expiration of the three months allowed for the return of the warrant to collect, but should proceed against such delinquent party in the way here pointed out, immediately on the demand and refusal of payment. On the hearing before the Justices, the collector may be admitted as a witness, and prove his demand of the rate, and the neglect of payment. The party may, of course, produce evidence in his defence, if he wishes it, but, as in every other case, he cannot be admitted as a witness in his own behalf. Should he not appear on the summons, still the same evidence before mentioned must be afforded, of the demand and neglect of payment, and judgment may be given in the matter, notwithstanding his absence.

On the hearing, the Justices cannot receive any evidence, or enter into any investigation as to the liability of the party to be rated, or his being overcharged, or there being any inequality or defect in the rate, or as to any other such points, but they are to hear and determine the matter merely with reference to the party being included in the assessment roll, and the demand and neglect of payment. Objections to the rate, or the party's liability, can be heard and determined only on an Appeal.

There is no power given by the Statute to commit the party to prison, if the rate is not paid or levied, or in any event whatever, therefore no such commitment can take place, although no goods can be found on which to levy, or from which the judgment can be satisfied.

The fees on the summons and on the subsequent proceedings, will be the same as in other summary prosecutions before Justices, and will be found under the Title,—Fees. The charges attending the levying under the warrant of dis-

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Forms of the summons and warrant of distress, will be found at the end of the Title.

As the prosecutions against the collectors, for neglecting to make collection and payment, and for improperly retaining money collected by them, are directed, if before Justices, to be in a summary manner; the proceedings and the Forms in such prosecutions will be the same as in suits before Justices for the recovery of private debts, and will be found set forth under the Title,—Summary Trials.

V. OF APPEALS.

Sec. 8, of the aforesaid Statute,—“ Provided always, that if any person or persons shall feel aggrieved by any such assessment, or the levying thereof as aforesaid, he, she or they may appeal for redress to the next General Sessions held in and for the county or district in which such assessment was made, or to any Special Sessions held therein, as hereinafter provided, for hearing such appeals, giving at least eight days' notice thereof to the Clerk of the Peace, who is hereby required to appear and support the rate or assessment made as aforesaid; and on the hearing of such appeal, the said General or Special Sessions may, without setting aside the whole or any other part of the said assessment, either set aside or lower the rate assessed on such person or persons, or otherwise finally determine the said appeal as to the said Justices shall seem lawful and right; and in case any money has been paid by any such person or persons for or on account of such rate, or the levying thereof, and the said Justices shall adjudge that the same, or any part thereof, be returned to such person or persons, the same shall by order of the said Justices be repaid to him, her or them, out of any money collected or received from the general assessment on the county or district wherein such appeal took place; but no such appeal shall in any case delay or prevent the collection or recovery of the sum assessed upon any such person or persons as aforesaid; but the same proceedings as herein before directed shall be had and pursued for the collection or recovery of the same, as if no such appeal had been made.”

Sec. 11. It shall and may be lawful for the Justices of the Peace in the several counties and districts, to hold Courts of Special Sessions, if they shall deem it proper and expedient, for the purpose of hearing and determining appeals as herein before provided, and enforcing the assessment and col-

lection of the said rates ; of the holding of which Sessions, eight days' notice shall be given, which Courts of Special Sessions shall have the same power and authority that Courts of General or Quarter Sessions possess, to hear and determine any appeal made as aforesaid, by any person or persons against any rate or assessment to which he, she, or they may be rated or assessed, under and by virtue of this Act."

By the direction in the Act, that the appeal shall be made to the "next Sessions," is to be understood, the next Sessions to which the party can by possibility appeal, after being aggrieved ; and this is always a question of fact. If the appeal is not made to such next Sessions, at which it is practicable to lodge it effectually, it cannot be allowed or heard at any subsequent Sessions. See 4 Burn's, 103.

Several parties having a joint grievance, may join in giving one notice of appeal. *Id.* 104.

Notice of Appeal.

The notice of appeal should be in writing, and if the ground of appeal be, that certain persons are omitted in the rate, the names of those persons should be specified in the notice of appeal. *Id.* 105.

When the appellant objects to his being rated at all, it is the practice for the respondents to begin ; but if he object to the amount of the rate, then the burden of proof lies on him.

Where the appellant disputes before the Sessions the amount of his rates, it is not sufficient for the respondent to shew that the appellant is in possession of *some* rateable property, they must also shew some probable ground for the amount at which he is charged in the rate. *Id.* 106.

Directions.

The same determinations and authorities which have been given under the division concerning the making of the assessment, may be referred to, and will equally serve to guide and direct the Sessions, with regard to the liability of parties or property to be rated ; as to apportioning the rate ; and on other points which may be urged, or arise on the hearing of appeals. Those authorities therefore, as also the other information contained under that division, need not be here repeated.

It has been seen that the appellant must give the Clerk of the Peace at least eight days notice of the appeal. If any shorter notice is given, and the objection is urged, the appeal cannot of course be heard, but must be dismissed.

It may here be remarked, that the calling of Special Sessions for the hearing of appeals is not imperative on the Justices, but they are only to call them, "if they deem it proper and expedient."

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VI. OF THE EXPENDITURE OF THE MONEY RAISED.

By Sec. 9, of the aforesaid Statute,—“ All money so raised by presentment or amercement as aforesaid, shall be paid into the hands of the Treasurers of the counties and districts respectively, and shall not be applied to any other uses or purposes than such for which the same was raised, or which is otherwise by law provided ; and if any person or persons who shall be appointed in the said presentment and order thereon, or amercement, to be director or directors, overseer or overseers of the work, or a distributor or distributors of the money raised as aforesaid, shall not at the next General Sessions, and in a reasonable time, to be by such Sessions appointed, make appear in his or their accounts, with good vouchers, that the money so raised and received by him or them, has been expended pursuant to the said presentment or amercement, to the use of the county or district, as by law provided, he or they shall be chargeable with the same ; and every person, so accountable for any public money, shall, when required by the said General Sessions, make up his accounts on oath ; and if any such accountant or accountants, when so required, shall neglect to make a fair and just account of all such public money, or shall, upon such accounts, be found to have such money or any part thereof remaining in his or their hands, he or they shall forthwith pay such money into the hands of such person or persons as shall by the Justices in the said Sessions, or by the Grand Jury, be named or appointed to receive the same, for the use of such county or district ; and in default thereof, such person or persons, so accountable, shall by the said Sessions, by their order or warrant, be committed to the common gaol, there to remain until such account be made, or balance paid, or sufficient sureties be given for the same.”

Sec. 10. The county or district Treasurers shall not pay out any money, raised as aforesaid and received by them, for any other purposes than those for which the same was raised, or for which payment may otherwise by law be made ; and such Treasurers shall make up their accounts upon oath, of all their receipts and payments, at every term of the General Sessions, to be approved or disapproved of by the said Court ; and such accounts shall be filed with the Clerks of the Peace ; and no Treasurer shall compound for any money to be raised, nor make any deductions for any sums they shall pay to any persons, but such as they shall account for by proper vouchers ; and if any Treasurer shall offend herein, or neglect to make up his accounts as aforesaid, he shall be incapable again to serve as such Treasurer, and shall by the Sessions be commit-

ted to gaol, without bail, there to remain until he fairly accounts with such Court, and receives from the same, a certificate of his having passed his accounts to their approbation."

VII. RECOVERY OF PENALTIES.

By Sec. 14, of the aforesaid Statute,—“All forfeitures and penalties imposed by this Act, the prosecution and recovery of which have not been herein before provided for, may may be sued for and recovered by any person who will prosecute for the same, or shall be sued for and recovered by the Clerk of the Peace for the county or district within which the same were incurred, by order of the Court of General or Quarter Sessions, held in such county or district, by bill, plaint, or information in any Court of Record within the Province, in cases where such forfeiture or penalty shall be the sum of ten pounds or upwards; and in all cases below the said sum of ten pounds, before any two Justices of the Peace, in a summary manner, as in cases of debt; and on judgment being given for the recovery of any such forfeiture or penalty, the same, together with the charges of prosecution, shall and may, by warrant of distress, be levied on the goods and chattels of the offenders; and in case sufficient distress cannot be found whereon to levy the same, it shall be lawful for the Court or Justices by whom such judgment was given, to commit such offender to the common gaol of the said county or district, there to remain without bail or mainprize for any time not exceeding three months, unless the said forfeiture and charges be sooner paid; and all the said forfeitures and penalties, when recovered, after deducting any expense incurred in prosecuting for the same, shall be paid to the Treasurer of the county or district within which the same were incurred, to be applied in aid of the rates assessed and collected by virtue of this Act.”

Directions.

As all the penalties which are by the Act directed to be recovered before Justices, are to be sued for in a summary manner, as in cases of debt, the proceedings and the requisite Forms, until judgment, will be the same as in such cases, and will be found set forth under the title,—Summary Trials. The proceedings after judgment, being by Warrant of Distress and Commitment, instead of the common writ of Execution, the requisite Forms, which may readily be filled up so as to serve, will be found under the Titles,—Distress, and Commitment.

The costs in such prosecutions will be the same as in such summary causes for the recovery of debts.

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VIII. OTHER REGULATIONS CONCERNING COUNTY RATES.

SEC. 13, of the same Statute,—“It shall be lawful for the Justices in General or Quarter Sessions, from time to time, to order such allowances and compensations to be made to the assessors, collectors, overseers, overseers or directors of work, distributors of money, and constables employed in the execution of this Act, or under and by virtue thereof, which have not herein before been provided for, from, by, or out of the monies assessed, levied, and collected by and from any rate under this Act, as to the said Justices in Sessions as aforesaid shall appear reasonable and proper.”

Compensation
to Collectors,
&c.

[NOTE. By the 6 W. 4, c. 22, No pecuniary allowance or emolument shall be thereafter made to assessors.]

Sec. 15. “No person shall be deemed incompetent to be a witness for the execution of the purposes of this Act, or in any appeal or other proceedings instituted by virtue thereof, by reason of his paying, or being liable to pay towards the aforesaid rates.”

Witnesses.

Sec. 16. No action shall be brought against any person for any thing done under the Act, after six Calendar months next after the fact committed ; and every such action shall be brought in the county or district where the cause of action arose ; and the defendant may at his election plead this Act especially, or plead the general issue, and give this Act and the special matter in evidence on the trial ; and if the defendant shall succeed in any such action he shall recover treble costs.

Actions for
proceedings
under the Act.

Sec. 17 & 18. No rates, orders, or proceedings removed by certiorari shall be quashed for want of form only. And no action shall be commenced against any person who shall have collected or received any money or any rate which shall be quashed on a certiorari, or otherwise, for any money collected or received on such rate before the certiorari was brought ; but the persons who have paid on such rate more than they ought to have paid, shall be repaid, or have the same allowed in the next rate.”

Removal of
Rates, &c. on
Certiorari.

Sec. 19. All former Acts respecting county rates are hereby repealed.

NOTE. The aforesaid Statute is at present limited in its duration.

Form of Summons for non-payment of County Rate.

County of } To A. D., of the township of —, in the
 } said county of —, yeoman.

[Seal.]

[Seal.]

WE whose names are hereunto set, and seals affixed, two of His Majesty's Justices of the Peace in and for the said county of —, do hereby summon you, personally to appear before us, at the —, at — in the said county, on the — day of — in the year —, at the hour of eleven o'clock in the forenoon of the same day, to shew cause why you refuse to pay the sum of —, duly rated and assessed upon you, in the rate or assessment made for defraying certain county charges upon the said county of —, for the year of our Lord —, otherwise we shall proceed as if you had appeared. Given under our hands and seals, at —, the — day of —, in the year of our Lord —.

A. M., J. P.

A. R., J. P.

Warrant of Distress to levy the Rate, on Judgment against the Party summoned.

County of } To A. C. one of the constables of the town-
 } ship of —, in the said county of —

[Seal.]

[Seal.]

WHEREAS in and by a rate and assessment duly made, assessed, established, and confirmed, pursuant to the Statute in that case made and provided, A. D. of the township of — in the said county of —, yeoman, was duly rated and assessed, for and towards defraying certain county charges upon the said county, for the year of our Lord —, in the sum of —. And whereas it duly appears unto us A. M. and A. R., Esquires, two of His Majesty's Justices of the Peace in and for the said county, as well upon the oath of A. C. a collector of the said county rates, for the said township of — in the said county, as otherwise, that the said sum of — hath been lawfully demanded of the said A. D., and that he the said A. D. hath refused and doth refuse to pay the same. And whereas it hath been duly proved to us the said Justices, that the said A. D. hath been duly summoned to appear before us the said Justices, to shew cause why the same should not be paid, but he the said A. D. hath not shewed to us any sufficient cause why the same should not be paid; These are therefore to require you forth-

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with to make distress of the goods and chattels of him the said A. D., and if within the space of six days next after such distress by you taken, the said sum of —, and also — more for the legal costs of prosecution, making together the sum of —, together with the reasonable charges of taking, keeping, and selling the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said sum of —, and also your reasonable charges of taking, keeping, and selling the said distress, rendering to him the said A. D. the overplus on demand; and if no such distress can be made, that then you certify the same unto us the said Justices, to the end that such further proceedings may be had therein as to law doth appertain. Given under our hands and seals at — this — day of —, in the year of our Lord above written.

A. M., J. P.

A. R., J. P.

RECEIVERS, see—LARCENY.

RECOGNISANCE.

RECOGNISANCE is a bond of record, testifying the recognisor to owe a certain sum of money to some other, and the acknowledging of the same is to remain of record; and none can take it, but only a judge or officer of record. These recognizances in some cases the Justices of the Peace are enabled to take by the express words of certain Statutes, but in other cases, (as for the peace and good behaviour, and the like,) it is rather in congruity, and by reasonable intendment of law, than by any express authority given them either by their commission or by the Statute law. It is now settled, that a Justice of the Peace is authorised to require surety of the peace for a limited time, (e. g. two years,) according to his discretion, and that he need not bind the party over to the next Sessions only. 5 Burn's. 6.

Power of Justices to take Recognisances.

Wheresoever any Statute gives them power to take a bond of any man, or to bind over any man to appear at the Assizes or Sessions, or to take sureties for any matter or cause, they may take a recognisance: yea, wheresoever they have authority given them to cause a man to do a thing, there it seems they have, in congruity, power given them to bind the party by recognisance to do it; and if the party refuse to be bound, the

Of the Form
of Recogni-
sance.

Manner of
taking the Re-
cognisance.

Justice may send him to gaol. But he can take no recognisance, but only of such matters as concern his office, and if he do, it seems to be void. Every obligation and recognisance taken by Justices of the Peace, must be made to our *Lord the King*, on pain of imprisonment of any person that shall take it otherwise. It must also contain the name, place of abode, and trade or calling, both of principal and sureties, and the sums in which they are bound. And it is most commonly subject to a *condition*, which is either indorsed or underwritten, or contained within the body of it, upon the performance of which, the recognisance shall be void. *Id.* 6—7.

When the parties are to enter into recognisance, call them by their names thus ; “ *you A. B. acknowledge to owe to our Sovereign Lord the King, the sum of —, and you C. D. acknowledge to owe to our Sovereign Lord the King the sum of —, to be levied on your respective goods and chattels, lands and tenements, for the use of our said Lord the King, his heirs and successors, if default shall be made in the condition following ; that is to say, if you the said A. B. shall make default in appearing at &c.* But the parties need not sign it. And it is usual for the Justices to mark at the foot of the examination,—A. B. in £40 to appear, &c ; and from such short note make out a record afterward. Yet the recognisance is a matter of record presently, so soon as it is taken and acknowledged, although it be not made up. When it is made up, if the Justice shall only subscribe his name, without his seal to it, this is well enough ; and that may be in either of these sorts,—*Acknowledged before me, A. M., or only to subscribe his name thus,—A. M.* *Id.* 7—8.

NOTE. Where parties are bound over to the *Sessions*, the Justices should certify the recognisances to that Court, but in felonies, and in other cases where persons are bound over to the *Supreme Court*, the Justices must certify such recognisances *there*, at the first term of each Court respectively.

The Judges of Oyer and Terminer are the proper Judges whether recognisances ought to be estreated or spared. And by parity of reason, it should seem, that the Justices of the Peace in the Quarter Sessions should have the like power in respect of offences cognisable there. 5 *Burn's*, 8.

Recognisance with Sureties.

County of { BE it remembered, that on the — day of
 { — in the — year of the reign of our Lord
William the Fourth, of the United Kingdom of Great Britain

and Ireland, King, Defender of the Faith, A. O. of —, in the said county of —, yeoman, and A. S., of —, in the county aforesaid, yeoman, and B. S. of —, in the county aforesaid, labourer, personally came before me A. M., Esquire, one of the Justices of our Lord the King, assigned to keep the peace in the said county, and acknowledged themselves to owe to our said Lord the King; that is to say, the said A. O. the sum of twenty pounds, and the said A. S. and B. S., each the sum of ten pounds, separately, and of good and lawful money of the Province of Nova Scotia, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lord the King, his heirs and successors, if the said A. O. shall make default in the condition hereunder written.

Acknowledged before me,

A. M.

The condition of the above written recognisance is such, that if the above bound A. O. shall personally appear before the Justices of our Sovereign Lord the King, assigned to keep the peace within the said county, and likewise to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the next General Sessions of the peace, [or before the Justices of His Majesty's Supreme Court for the Province of Nova Scotia, at the next term of the said Court,] to be holden in and for the said county, then and there to answer to our said Lord the King, for and concerning the — [here state the offence charged against the party,] with which said offence the said A. O. stands charged before me the said Justice, and to do and receive what shall by the Court be then and there enjoined him, and shall not depart the Court without licence, then the above written recognisance shall be void.

Recognisance to prefer a Bill of Indictment and give Evidence.

County of } BE it Remembered, that on the — day of
 } — in the — year of the reign of our Lord
 William the Fourth, of the United Kingdom of Great Britain
 and Ireland, King, Defender of the Faith, A. I. of —, in
 the said county, yeoman, personally came before me A. M.,
 Esquire, one of the Justices of our said Lord the King assigned
 to keep the peace in the said county, and acknowledged him-
 self to owe to our said Lord the King, the sum of — pounds,
 of good and lawful money of the Province of Nova Scotia, to

be made and levied of his goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if he the said A. I. shall fail in the condition hereunder written.

Acknowledged before me,

A. M.

The condition of the above written recognisance is such, that whereas one A. O., late of —, was this present day brought before the Justice above mentioned, by the above bounden A. I., and was by him charged with the felonious taking and carrying away three silver spoons, of the goods of him the said A. I., and thereupon was committed by the said Justice, to the common gaol in and for the said county, if therefore he the said A. I. shall and do, at the next term of the Supreme Court to be holden in and for the said county, prefer, or cause to be preferred, one bill of indictment of the said felony, against the said A. O., and shall then also give evidence there concerning the same, as well to the jurors that shall then enquire of the said felony, as also to them that shall pass upon the trial of the said A. O., that then the said recognizance to be void, or else to stand in full force for the King.

Recognisance to give Evidence.

County of } BE it Remembered, that on the — day of
—, in the — year of the reign of our Sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, A. W., of —, in the said county, yeoman, did come before me, A. M., Esquire, one of the Justices of our said Lord the King, assigned to keep the peace of the said county, and acknowledged himself to owe to our said Lord the King, the sum of ten pounds, of lawful money of the Province of Nova Scotia, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if he the said A. W. shall fail in the condition hereunder written.

Acknowledged before me,

A. M.

The condition of the above written recognisance is such, that if the above bounden A. W. shall personally appear at the next term of His Majesty's Supreme Court, to be holden at —, in and for the said county, and then and there give such evidence as he knoweth, upon a bill of indictment to be

exhibited by A. I., of —, yeoman, to the Grand Jury, against A. O., late of —, labourer, for feloniously stealing three silver spoons, the property of the said A. I.; and in case the said bill be found a true bill, then if the said A. W. shall then and there give evidence to the Jurors that shall pass on the trial of the said A. O., upon the said bill of indictment, and not depart thence without leave of the Court, then this recognisance to be void; otherwise to remain in its full force.

If the parties are bound over to the Sessions, the recognisances must of course be filled up accordingly. Where the record of the recognisance is required on an Estreat, or for any other purpose, it must be made up according to the foregoing form, in each case respectively. It will, however, be sufficient in the first instance to send into the Court Minutes of the Recognisances, after the following Forms:—

Directions.

Of the Party charged.

County of } The King,
 } *vs.*

A. O., for— (state the offence.)

THE said A. O., bound in £—, and A. S., and B. S., of —, yeomen, bound as sureties in £— each, conditioned for the appearance of the said A. O., at the next term of the — for said county, to answer, &c. — day of —, 1837. Before me, [or us,]

A. M., J. P.

Of the Prosecutor, or Witness.

County of } THE King,
 } *vs.*

A. O., for —

A. I., of —, yeoman, is bound in £10, to appear, &c. at the next term of the — for said county, to prosecute, &c. — day of —, 1837.

Before me, [or us,]

A. M., J. P.

REGISTRY OF DEEDS.

By the 4 W. 4, c. 14. 4 V. 266, Persons who have executed deeds of conveyance of lands within this Province, may appear before any Justice of the Peace, and acknowledge

upon oath before him, their signing, sealing, and delivering such deeds ; and such Justice shall make and set down in writing, a memorandum signed with his hand upon the deed of conveyance, stating the day and year when the said acknowledgment and oath were taken ; Whereupon the Registrar of deeds, in the place where such deed of conveyance is required to be registered, shall register the same, together with the said memorandum of acknowledgement, in the same manner as deeds are by law directed to be registered.

Sec. 2. The Registrar of deeds, or any of his deputies, may register any deed of conveyance, as heretofore, on the oath of one of the subscribing witnesses to the same, or upon a certificate on the deed, written and signed by a Justice of the Peace, that one of the subscribing witnesses to such deed had personally appeared before the said Justice, and had made oath that the said deed had been duly executed by the party or parties by whom the same purported to be executed, in the presence of such subscribing witness ; and such certificate shall express therein the day and year when such witness appeared and made oath to the execution of such deed, and such certificate shall also be registered.

Sec. 3. There shall be paid to the Justices taking the aforesaid acknowledgment, and making the said memorandum thereof, or granting the said certificate, the fee of one shilling, and no more. *Perpetual.*

REPLEVIN, see,—TRESPASSES.

RESCUE.

RESCUE, signifies a forcible setting at liberty, against law, a person arrested by the process or course of law. It seems that it is necessary, that the rescuer should have knowledge that the person is under arrest for a criminal offence, if he be in the custody of a private person ; but if he be in the custody of an officer, there, at his peril, he is to take notice of it. A hindrance of a person to be arrested that has committed felony, is a misdemeanor, but no felony ; but if the party be arrested, and then rescued, if the arrest were for felony, the rescuer is a felon, if for treason, a traitor, if for trespass, fineable. 5 *Burn's*, 10.

REVENUE.

I. TIDE WAITERS.

By the 4 W. 4, c. 48, § 23. 4 V. 312, If the master or owner of the ship, in which goods are entered for exportation as aforesaid, shall unnecessarily delay unlading the part or parts of her cargo entered to be landed, or shall, after the unlading thereof, delay for a space longer than ten days, proceeding on her voyage and departing from the Province, with the goods so to be exported, the said master or owner shall pay each and every day to the tide waiter employed to attend such vessel, during such delay, the daily pay established for a tide waiter to receive from the Province, when on duty; and on refusal, it shall be lawful for such tide waiter to recover the same in a summary way, before one Justice of the Peace for the county or place within which such tide waiter shall have been so employed.

II. SMUGGLING.

By the 4 W. 4, c. 50. 4 V. 320, All goods, and all ships, vessels, and boats, and all carriages, and all cattle, liable to forfeiture under any Act, relating to the Colonial revenue, shall and may be seized and secured by any officer of the Colonial revenue, or by any person employed for that purpose, with the concurrence of the Board of Revenue, and also by any sheriff or deputy sheriff of any county or district, or by any Justice of the Peace therein, or by any person who in any place distant more than ten miles from any office of a Collector of Impost, shall by the warrant of any Justice of the Peace, granted upon information made on oath before him of any such forfeiture, be appointed to seize and secure any boats, carriages, or cattle liable to forfeiture, and every person who shall in any way hinder, oppose, molest, or obstruct any officer of the Colonial revenue, or any person so employed as aforesaid, or any such sheriff, deputy sheriff, Justice of the Peace, or other person appointed by any Justice, in manner aforesaid, or any person or persons acting in their aid or assistance, shall for every such offence forfeit the sum of one hundred pounds.

Sec. 5. It shall be lawful for any officer of the Colonial revenue to enter in the day time, into any house, shop, cellar, or other building whatsoever, wherein such officer shall have reasonable cause to suspect or believe any goods to be, or to be concealed or deposited, which are liable to forfeiture under

By whom
Goods, &c.
liable to for-
feiture may
be seized.

Entering Hou-
ses, &c. to
search for
Smuggled
Goods.

any Act relating to the Colonial revenue, provided, that before such entry made, information on oath shall be given to some one Justice of the Peace, for the place where such house, shop, cellar, or other building is situate, that such officer has reasonable cause to suspect and believe, that goods liable to forfeiture as aforesaid, are deposited or concealed therein; and immediately on such information being laid or given, such Justice shall, and he is hereby enjoined and authorised, forthwith, but at some time between sun-rising and sun-setting, to go with such officer to such house, shop, cellar, or other building, and then and there to enter with such officer, or to authorise him to enter and search for such goods, if the doors be open, but if the doors be fastened, and admission denied, then, after first demanding to be admitted, and declaring the purpose for which such entry is demanded, it shall be lawful for such Justice, and he is hereby required, to direct and order such officer, forcibly to enter into such house, shop, cellar, or other building, and to search therein for any goods forfeited, and to seize all goods liable to forfeiture under any Act relating to the Colonial revenue.

Assaulting or
obstructing
Officers.

Sec. 8. If any person shall, by force or violence, assault, resist, molest, hinder, or obstruct any officer of the Colonial revenue, or other person employed as aforesaid in the exercise of his office, or any person acting in his said aid or assistance, such person, being thereof convicted, shall be adjudged guilty of a misdemeanor, and shall be proceeded against as such, and punished at the discretion of the Court before whom such person shall be tried.

Prosecutions
against Smug-
gled Goods,
before Justices

Sec. 10. Subject in all respects to the control and order of the Board of Revenue, vessels and goods seized shall be delivered into the possession of the Collector for the district, who shall cause appraisement thereof to be made, by three competent persons on oath, and if on such appraisement, made and signed by the appraisers, it shall appear, that any goods, or any cattle, or carriages, used in the removal thereof, which have been seized, is, or are not, of the full and reasonable value of forty pounds, then and in every such case, but not otherwise, nor for any ship seized, an information in writing may, if the party who made the seizure think proper so to proceed, be exhibited in the name of such Collector, before any two Justices of the Peace, resident in the district of such Collector, charging the said goods or other thing seized, to be forfeited under some particular Section or Sections in the information to be referred to, of the Act under which the seizure is made, and praying the condemnation thereof; and upon such information being exhibited to the said Justices, they shall,

under their hands and seals, grant a summons, requiring all persons claiming or having any interest in the goods or things seized, to appear at the place, day and hour, in such summons to be specified, there to claim such goods, and answer the information, otherwise the goods will be condemned; and a copy of such summons shall, at least eight clear days before the time of appearance, be served upon the person from whose possession the goods were taken, or shall be left at, or affixed openly, to the house, building, or place, or the ship, vessel, or boat, if there remaining, from which the goods were taken; or at two or more public places nearest to the place of seizure; and if any party shall appear to answer such information, the said Justices shall hear and determine the same, and acquit or condemn the goods or things, as the right may be; but if no person appear, judgment of condemnation shall be given, and the Justices shall issue a warrant to the Collector, requiring and authorising him to sell the goods seized, by public auction, after such notice of sale as shall be appointed by the warrant, and after paying the expense of proceedings, to pay over one third part of the nett proceeds of the seizure, to the party who seized the goods condemned, another third part to the Overseers of the poor of the town or place where the goods or things condemned shall be seized, for the benefit of the poor of such town or place, and the remainder, as the Board of Revenue shall appoint.

Sec. 11. If either the party prosecuting, or claimant, be dissatisfied with the judgment given on such information, he shall be entitled to appeal therefrom, to the Supreme Court, at its next sitting in the county or district for which the collector is appointed, and such appeal shall be allowed, upon sufficient security being given to the satisfaction of the said Justices, by bond, to abide the decision of the said Supreme Court; and if the appeal be by the claimant, the security shall be given in treble the appraised value of the goods, and the proceedings shall be sent to such Court, and the said Court shall, upon such appeal, hear and determine the same in a summary manner, and confirm or reverse the judgment of the magistrates, and with or without costs, as to such Court shall seem fit; and if there be judgment of condemnation, shall order the sale as aforesaid.

Sec. 12. If any goods, or any ship or vessel, shall be seized as forfeited under any Act relating to the Colonial revenue, it shall be lawful for the Judge or Judges of any Court having jurisdiction, to try and determine such seizures, with the consent of the collector of impost, to order the delivery thereof, on security by bond with two sufficient sureties, to be

Appeal from
decision of
Justices.

Delivering
on Security
Goods or Ves-
sels seized.

first approved of by such collector, to answer double the value of the same, in case of condemnation ; and such bond shall be taken to the use of His Majesty, in the name of the collector of impost, in whose custody the goods, or the ship or vessel, may be lodged ; and such bond shall be delivered and kept in the custody of such collector ; and in case the goods, or the ship or vessel, shall be condemned, the value thereof shall be paid into the hands of such collector, who shall thereupon cancel such bond, and all the provisions of this clause shall extend to prosecutions before two magistrates as aforesaid.

Annual.

Entering and
Examining
Vessels and
Boats.

By the 6 W. 4, c. 8, Sess. 1836, it is enacted,—That it shall be lawful for the officers of His Majesty's Customs, the officers of Impost and Excise, the sheriffs and magistrates throughout this Province, and any person holding a commission for that purpose from the Lieutenant Governor, to go on board any vessel, or boat, within any port, bay, creek, or harbour in this Province, and also to go on board of any vessel or boat hovering within three marine miles of any of the coasts, bays, creeks, or harbours thereof ; and in either case freely to stay on board such vessel or boat, as long as she shall remain within such port or distance ; and if any such vessel or boat be bound elsewhere, and shall continue so hovering for twenty-four hours, after the master shall have been required to depart, it shall be lawful for any of the above enumerated officers, or person, to bring such vessel or boat into port ; and to search and examine her cargo, and to examine the master upon oath, touching the cargo and voyage ; and if there be any goods on board prohibited to be imported into this Province, such vessel or boat, and the cargo laden on board thereof, shall be forfeited ; and if the said vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing or preparing to fish, or to have been fishing within such distance of such coasts, bays, creeks, or harbours of this Province, such vessel or boat, and their respective cargoes, shall be forfeited ; and if the master or person in command thereof, shall not truly answer the questions which shall be demanded of him in such examination, he shall forfeit the sum of one hundred pounds.

Seizing Goods,
Vessels, &c.

Penalty for
obstructing
Officers.

Sec. 2. All goods, ships, vessels, and boats, liable to forfeiture under this Act, shall and may be seized and secured by any such officer of the Customs, officer of Impost and Excise, Sheriffs, Magistrates, or other person holding such commission as aforesaid ; and every person who shall in any way oppose, molest, or obstruct any such officers, sheriffs, ma-

gistrates, or other persons aforesaid, in the exercise of his office, or shall in any way oppose, molest, or obstruct any person acting in their aid or assistance, shall for every such offence forfeit two hundred pounds.

Sec. 3. All goods, ships, vessels, and boats, which shall be seized as being liable to forfeiture under this Act, shall be forthwith delivered into the custody of the Collector and Comptroller of the Customs, at the Custom House next to the place where the same were seized.

Custody of
Goods and
Vessels seized

Sec's. 11, 12 & 13. No action shall be commenced against any officer as aforesaid, magistrate, or other person authorised to seize as aforesaid, for any thing done in the exercise of his office, until one calendar month after notice in writing of such action shall have been delivered to him, or left at his usual place of abode; and every such action shall be brought within three calendar months after the cause thereof; and such officer, magistrate, or other person aforesaid, may within one calendar month after such notice, tender amends to the party complaining, or his agent, and may plead such tender in bar to any action; and if the Jury shall find the amends sufficient, they shall give a verdict for the defendant.

Actions a-
gainst Officers
&c.

Sec. 15. If the Judge or Court before whom any such action shall be tried, shall certify upon the record, that the defendant or defendants in such action acted upon probable cause, then the plaintiff shall not be entitled to more than two-pence damages, nor to any costs of suit.

Certificate of
probate cause.

Sec. 18. This Act shall not go into force, or be of any effect, until His Majesty's assent shall be signified thereto, and an order made by His Majesty in Council, that the clauses and provisions of this Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the Province of Nova Scotia. *Assented to.*

RIDING DISORDERLY.

By the 4 G. 4, c. 23. 3 V. 166, "It shall not be lawful for any person to ride at full speed, or gallop any horse, mare, gelding, mule, or ass, on any street or public highway in any of the towns within this Province. Every person offending against this regulation, shall upon conviction on the oath of one credible witness, before any one Justice of the Peace, forfeit and pay for each and every offence, the sum of ten shillings, and in case of refusal or neglect to pay, the same shall be levied by warrant of distress on the goods and chattels

of such offender, and for want thereof he shall be committed by such Justice to the county gaol, for a period not exceeding forty-eight hours. All prosecutions under the Act, shall be commenced in forty-eight hours after the committing of the offence ; and all monies arising from fines under the Act, shall be paid into the hands of the Treasurer of the county, and be applied to the repair of highways in such county. *Temporary.*

For directions with regard to prosecutions for the offence mentioned in the foregoing Act, and for the requisite Forms, see respectively, Titles,—Information ; Summons ; Conviction ; Distress ; Commitment.

RIOT.

- I. WHAT IS A RIOT.
- II. HOW, AND BY WHOM, THE SAME MAY BE RESTRAINED.

I. WHAT IS A RIOT.

WHEN *three persons or more*, shall assemble themselves together, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, with force or violence, against the peace, or to the manifest terror of the people, whether the act intended were of itself lawful or unlawful, if they only meet to such a purpose or intent, although they shall after depart of their own accord, without doing any thing, this is an *unlawful assembly*. If after their first meeting they shall move forward towards the execution of any such act, whether they put their intended purpose in execution or not ; this, according to the general opinion, is a *rout* : And if they execute such a thing indeed, then it is a *riot*. 5 *Burn's*, 14.

Three persons, or more.] There must be this number at least, for there can be no riot where there are no more persons than two. Women are punishable as rioters, but infants under the age of discretion are not persons within the aforesaid description, punishable as rioters. *Id.* 15.

Assemble themselves together.] It seems agreed, that if a number of persons being met together at a fair, or market, or church aisle, or on any other lawful and innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which

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none are guilty, but those who actually engage in it. Yet it is said, that if persons innocently assembled together, do afterwards, upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot ; because upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design. An assembly of a man's friends for the defence of his person against those who threaten to beat him, if he go to such a market, &c. is unlawful ; for he who is in fear of such insults, must provide for his safety, by demanding the surety of the peace against the persons by whom he is threatened, and not make use of such violent methods. But an assembly of a man's friends, at his own house, for the defence of the possession of it, against such as threaten to make an unlawful entry, or for the defence of his person against such as threaten to beat him in his house, is indulged by law ; for a man's house is looked upon as his castle. He is not however to arm himself and assemble his friends in defence of his close. If any person encourages, or promotes, or takes part in riots, whether by words, signs, or gestures, or by wearing the badge or ensign of the rioters, he is himself to be considered a rioter, for in this case, all are principals. *Id.* 15—16.

In the execution of some enterprise of a private nature.] It also seems agreed, that the injury or grievance complained of, and intended to be revenged or remedied by such an assembly, must relate to some private quarrel only ; as the inclosing of lands in which the inhabitants of a town claim a right of common, or gaining the possession of tenements, the title whereof is in dispute, or such like matters relating to the interests or disputes of particular persons, and no way concerning the public ; for wherever the intention of such an assembly is to redress public grievances, as to pull down enclosures in general, or reform religion, and the like, it is high treason. *Id.* 16.

Against the peace, or to the terror of the people.] It seems to be clearly agreed, that in every riot there must be some such circumstances, either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people ; as the shew of armour, threatening speeches, or turbulent gestures ; for every such offence must be laid to be done, *to the terror of the people.* And from hence it clearly follows, that assemblies at wakes, or other festival times, or meetings for exercise of common

sports or diversions, as wrestling, and such like; are not riotous. But it is not necessary in order to constitute this crime, that personal violence should have been committed. From the same ground also, it seems to follow, that it is possible for three persons or more to assemble together with an intention to execute a wrongful act, and also actually to perform their intended enterprise, without being rioters; as if a man assemble a suitable company, to carry away a piece of timber, or other thing, whereto he pretends a right, that cannot be carried without a great number, if the number be not more than are needful for such purpose, although another man hath better right to the thing so carried away, and that this act be wrong and unlawful; yet it is of itself no riot, except there be withal threatening words used, or other disturbance of the peace. Much more may any person, in a peaceable manner, assemble a fit company to do any lawful thing, or to remove or cast down any common nuisance. Thus, every private man, to whose house or land any nuisance shall be erected, made, or done, may in a peaceable manner assemble a fit company, with necessary tools, and may remove, pull, or cast down such nuisance, and that before any prejudice received thereby; and for that purpose, if need be, may also enter into another man's ground. Thus, a man erected a wear across a common river, where people have a common passage with their boats, and divers persons assembled with spades, crows of iron, and other things necessary to remove the said wear, and make a trench in *his* land who erected the wear, to turn the water, so as they might the better take up the said wear; and they did remove the said nuisance; this was holden neither any forcible entry, nor yet any riot.

But in the cases aforesaid, if in removing any such nuisance, the persons so assembled shall use any threatening words, (as to say they will do it, though they die for it, or such like words,) or shall use any other behaviour in apparent disturbance of the peace, then it seems to be a riot; and therefore where there is cause to remove any such nuisance, or to do any like act, it is the safest, not to assemble any multitude of people, but only to send one or two persons, or if a greater number, yet no more than are needful, and only with fit tools, to remove, pull, or cast down the same; and that such persons attend to their business only, without disturbance of the peace, or threatening speeches. *Id.* 16—17.

Whether the act intended were of itself lawful or unlawful.] It hath been generally holden, that it is no way material, whether the act intended to be done by such an assembly be of itself lawful or unlawful; from whence it follows, that if three

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or more persons assist a man to make a forcible entry into lands, to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nuisance, or other thing, which may lawfully be done in a peaceable manner, they are as properly rioters, as if the act intended to be done by them were never so unlawful. *Id.* 17.

II. HOW AND BY WHOM THE SAME MAY BE RESTRAINED.

By the common law, any private person may lawfully endeavour to suppress a riot, by staying those whom he shall see engaged therein, from executing their purpose, and also by stopping others whom he shall see coming to join them. However, it seems extremely hazardous for private persons to proceed to these extremities; and such violent methods seem only proper against such riots as savour of rebellion. *Id.* 17.

Also by the common law, the sheriff, constables, and other peace officers, may and ought to do all that in them lies towards the suppressing of a riot, and may command all other persons to assist therein. *Id.* 18.

By the 34 Ed. 3, c. 1, "The Justices of the Peace shall have power to restrain rioters, and to arrest and chastise them according to their offence; and cause them to be imprisoned and duly punished, according to the law and custom of the realm, and according to that which to them shall seem best to do, by their discretions and good advisement."

And this Statute hath been liberally construed for the advancement of justice; for it hath been resolved, that if a Justice find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail; but that he may also authorise others to arrest them, by a bare verbal command, without other warrant; and that by force thereof, the person so commanded may pursue and arrest the offenders in his absence, as well as presence. Also it is said, that after a riot is over, any one Justice may send his warrant to arrest any person who was concerned in it, and also that he may send him to gaol, till he shall find sureties for his good behaviour. But it seems to be agreed, that no one Justice hath any power by force of this Statute, either to record a riot upon his own view, or to take an inquisition thereof after it is over. Also, if one Justice, proceeding upon this Statute, shall arrest an innocent person as a rioter, it seems that he is liable to an action of trespass, and that the party arrested may justify the res-

cuing himself, because no single Justice is by this Statute made a judge of the said offence. *Id.* 18.

Record by a
Justice of Riot
in his view.

If a Justice acting as a Judge, by any Statute whatsoever empowering him so to do, make a record upon his view of a riot committed in his presence, such record shall not be traversed; for the law gives such uncontrollable credit to all matters of record made by any Judge of record, as such, that it will never admit of an averment against the truth thereof. *Id.* 19.

RIVERS.

By the 6 & 7 G. 3, c. 1, 1 V. 122, If any person or persons shall unlawfully and maliciously break down or cut down the bank or banks of any river, or any sea bank, or dykes, whereby any lands shall be overflowed, or damaged, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy. *Perpetual.*

The proceedings and the Forms, on informations lodged with a Justice, for the offence mentioned in the foregoing Act, will be the same as in other cases of felony, and will be found under the respective Titles,—Information; Warrant; Examination; Commitment.

As to Fisheries in Rivers, see, Title,—FISHERIES.

ROADS, see HIGHWAYS.

ROBBERY.

THERE are two kinds of robbery;—from the *person*, and from the *house*. It is the former of these that is treated of under this Title; the latter, namely robbery from the house, belongs to the Titles,—Larceny and Burglary.

Robbery, is a felonious taking of money or goods, to any value, from the person of another, or in his presence, against his will, by violence, or putting him in fear.

Felonious.] For to make it robbery, there must be a felonious intention, and so it ought to be laid in the indictment.

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Taking.] The taking must be against the will of the owner, and to constitute the crime of robbery, the property must be taken from the person, either by violence, or putting him in fear; either of these circumstances is sufficient. But no sudden taking of a thing, unawares, from the person, as by snatching any thing from the head, or hand, is sufficient, unless some injury be done to the person, or unless there be some previous struggle for the possession of the thing taken.

Violence.] Thus, where the prisoner, while a lady was stepping into her carriage, snatched at her diamond ear-ring, and separated it from her ear, by tearing the ear entirely through; but there was no proof of the ear-ring ever having been seen in his hand, and upon the lady's arrival at home, it was found among the curls of her hair; the Judges, on a case reserved, were all of opinion, that there was a *sufficient taking from the person* to constitute robbery. They thought that it was sufficient, as the ear-ring was in the possession of the prisoner, separate from the lady's person, though but for a moment, and though he could not retain it, but lost it again the same instant. So where one was indicted for taking a gentleman's sword from his side, *clam et secreté*, it was holden to be a robbery, because the gentleman observing that the prisoner had laid hold of his sword, laid hold of it himself at the same time, and struggled for it. 5 *Burn's*, 69.

Against the will.] It is of the essence of robbery, that the goods be taken against the will of the owner, although the circumstance of putting in fear need not be strictly proved; for if a man be knocked down without any previous warning, and thereby rendered insensible, or if he manfully resist and be overpowered without being under any fear at all, it is not the less robbery on that account.

Putting him in fear.] Robbery may also be constituted by putting in fear, as well as by force, or perhaps in strictness it may be said that fear will supply the place of force. A colourable gift, which in truth was extorted by fear, amounts to a taking and robbery in law. The same rule holds, although the thing taken were not really within the original contemplation of the robber, nor the object of his pursuit at the time. As where a man assaulted a woman, with intent to commit a rape, and she, without any demand from him, offered him money, which he took and put into his pocket, but continued to treat her with violence, to effect his original purpose, till he was interrupted by the approach of another person. This was holden to be robbery. It is robbery, to extort money from a person by threatening to charge him with an unnatural crime; though he parted with his money only from fear for his character, and from no other fear.

Where the prisoners threatened to bring a mob from Birmingham, (then in a state of riot and disturbance,) and burn the prosecutor's house down, if he did not give them money, which he did under fear of that threat, it was held to be robbery. But money extorted by threats of being sent to prison for a pretended debt, but without fear of any other personal violence, has been holden to be duress and not robbery.

If the property be not taken by actual violence, and the owner only deliver it in consequence of prior threats, such delivery must be enforced by terror actually felt at the time, to constitute the crime; otherwise there is neither actual nor constructive violence in the taking, and consequently no robbery.

It is not enough that the fear arise from menaces after the property has been taken by stealth. Such taking only amounts to simple larceny. *5 Burn's*, 70 to 76.

And taking from his person.] Taking a thing in a man's presence, is, in law, a taking from his person. Thus, if one take or drive my cattle out of my pasture, in my presence, this is robbery, if he make an assault upon me, or put me in fear. *Id.* 76.

All that come in company to rob are principals, though one actually do it. *Id.* 83.

By the 32 G. 2, c. 13. 1 V. 17, "If any person or persons, shall by night or by day, rob, or by violence take money or goods from any person, putting him in fear, in any highways, or in any streets or lanes of a town, each and every of the offenders, their aiders and abettors, shall upon due conviction, suffer as felons without benefit of clergy." *Perpetual*.

NOTE. Justices of the Peace cannot let to bail a party charged with robbery, it being a capital felony, but must commit him, for trial in the Supreme Court.

The proceedings by and before Justices, on informations of this offence, and also the requisite Forms, will be the same as in other cases of capital felonies, and will be found under the respective Titles,—Information; Warrant; Examination; Recognizance; Commitment.

ROGUES, &c., see—VAGRANTS.

SABBATH, see—LORD'S DAY.

SALT.

By the 32 G. 3, c. 4. 1 V. 292, All salt exposed to sale in any part of the Province, shall be measured by the officers appointed for that purpose ; and such officers shall be sworn to the faithful discharge of their duty, and upon refusal to accept of the said office, or being guilty of any neglect or misbehaviour in the execution of the duties thereof, they shall severally forfeit and pay, for the use of the poor of the town in which they reside, a sum not exceeding three pounds, to be recovered before any two Justices of the Peace for the same county. All salt imported into the Province shall be subject to the foregoing regulation." *Perpetual.*

By the 56 G. 3, c. 4. 2 V. 200, made in addition to, and amendment of the before mentioned Act, it is enacted, " That all salt delivered from any ship or vessel to any truckman, or any other person, without having been duly and regularly admeasured by the proper officer appointed by the Court of Sessions to survey the same, shall be forfeited, or the value thereof, by the seller thereof, to and for the use of the poor of the township.

Sec. 6. Every measurer of salt who shall undertake to attend the admeasurement of the same from more than one vessel, at one and the same time, shall forfeit for every such offence forty shillings, to be recovered before any one Justice of the Peace, by warrant of distress, and to be applied for county purposes.

Sec. 7. Such measurer shall receive two pence, for every hogshead of salt measured by him, to be paid by the seller of the same. *Perpetual.*

In prosecutions before Justices, on either of the foregoing Statutes, the like proceedings must be observed as in similar cases already mentioned in this work, directions concerning which, with the requisite Forms, which may readily be made to serve, will be found under the respective Titles,—Information ; Summons ; Conviction ; Distress.

SCHOOLS.

By the 6 W. 4, c. 92, Sess. 1836. " Whenever a majority of the freeholders and inhabitants of any school district, rateable, or subject to be assessed as hereinafter mentioned, who shall meet at a public meeting of such freeholders

and inhabitants, to be held after sufficient public notice to be given, at least twenty days previous to such meeting, by the trustees of such school district, in at least five public places in the same district, shall agree at such public meeting, to raise the several sums required to be raised and provided by them, under the provisions of this Act, or the Act hereby continued and amended, by an equal rate or assessment upon each person, according to his ability, they shall certify the same to the next General Sessions of the Peace for the county or district wherein such school district is situated, and the same shall be assessed at the same time, and in the same manner, and under and subject to the several regulations, and by the same means, course, and proceedings, as by any Acts of the General Assembly now in force, or hereafter to be enacted, are or may be provided, for levying rates for the support of the poor, upon each of the freeholders and inhabitants of such school district, in a rateable and equal proportion, according to his ability, and shall be collected and paid over to the trustee or trustees appointed by the Board of Commissioners for such school district, for which such assessment was raised." *Temporary.*

Directions.

It will be sufficient to observe here, that where proceedings are required to take place before a Justice for the recovery of any rates assessed under the foregoing Act, such proceedings must, as directed by the Act, be the same as for the recovery of poor rates; and for which, with the requisite Forms, see Title,—Poor.

SEAMEN (MERCHANT.)

By the Statutes of the 6 W. 4, c. 48, Sess. 1836, and the 7 W. 4, c. 56, Sess. 1837, Various enactments and regulations are made, relating to seamen, hired and serving on board of merchant ships belonging to this Province, and trading to other countries; which regulations, for the sake of convenience, will here be arranged and recited in the following order.

I. AGREEMENT.

Nature and
form of
Agreement.

SEC. 1, of the first mentioned Statute. "It shall not be lawful for any master of any ship or vessel registered in and belonging to this Province, trading to parts beyond the seas,

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or out of this Province, to carry to sea on any voyage, either from this Province or from any other place, any seaman or other person, as one of his crew or complement, (apprentices excepted,) without first entering into an agreement in writing with every such seaman, specifying what monthly or other wages each such seaman is to be paid, the capacity in which he is to act, and the nature of the voyage in which the ship is intended to be employed, so that the seaman may have some means of judging of the probable period for which he is likely to be engaged; and the said agreement shall contain the day of the month and year in which the same shall be made, and shall be signed by the master in the first instance, and by the seamen, respectively, at the port or place where such seamen shall be respectively shipped, and the master shall cause the same to be, by, or in the presence of the party who is to attest their respective signatures thereto, truly and distinctly read to every such seamen, before he shall be required to sign the same, in order that he may be enabled to understand the purport and meaning of the engagement he enters into, and the terms to which he is bound.

Sec. 2. Every such agreement shall be in the form, and shall contain true entries under their respective heads, of the several particulars set forth in the schedule to this Act annexed, so far as the same can be ascertained; and the owner and the master of every such ship, or one of them, shall on reporting his ship's arrival at her port of destination in this Province, deposit, or cause to be deposited with the Collector of the Customs at such port, a true copy of such agreement, attested by the signature of the master, to the intent, that every person who may be interested in any such agreement, may at all times have the means of knowing the terms and conditions thereof.

Sec. 3. "It shall be lawful for the master or owner of any such ship, proceeding to a port where it may be deemed advisable to sell the same, to insert in the said agreement, a clause or stipulation, providing for such sale at any designated port or ports, during the voyage described in such agreement, and for the discharge of the crew at such port or ports, or either of them, upon such sale taking place; which said stipulation shall however distinctly and clearly express what amount of wages shall be paid to the seamen on board of such ship, upon the sale thereof at any and each of the said port or ports, whereat it is proposed to sell the same, and whether any and what increased rate of wages is to be paid upon the sale of such ship, and the discharge of the crew.

Stipulation as
to Sale of Ves-
sels.

Sec. 5. "No seaman by entering into or signing such

Reservation
as to means
for recovery
of Wages.

agreement, shall forfeit his lien upon the ship, nor be deprived of any remedy for the recovery of his wages, which seamen are now lawfully entitled to, against either the ship, the master, or owners thereof; nor shall any agreement made contrary to, or inconsistent with the provisions of this Act, or any clause whereby a seaman shall consent to forego the right which the maritime law gives him to wages, in the case of freight earned by ships subsequently lost, or containing any words to that effect, be valid or binding on any seaman signing the same; and that in cases in which it may be necessary that the agreement should be produced, to sustain a claim on the part of a seaman, no obligation shall lie upon the seaman to produce the same, nor shall any seaman fail in any suit or proceeding for the recovery of his wages, for want of the production of any such agreement, or of any deposited copy thereof as aforesaid, or for the want of any notice to produce the same."

Schedule in this Act referred to.

AN Agreement, made pursuant to the directions of an Act of the General Assembly of Nova Scotia, passed in the sixth year of the reign of his Majesty King William the Fourth, between — the master of the ship —, of the port of —, of the burthen of — tons, and the several persons whose names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board the said ship, in the several capacities, against their respective names expressed, on a voyage from the port of — to — [here the intended voyage is to be described, as nearly as can be done, and the places at which it is intended the ship shall touch, or if that cannot be done, the nature of the voyage in which she is to be employed] and back to the port of — and the said crew further engage, to conduct themselves in an orderly, faithful, honest, careful, and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful commands of the master, in every thing relating to the said ship, and the materials, stores, and cargo thereof, whether on board such ships, in boats, or on shore. [Here may be inserted any other clause which the parties may think proper to be introduced into the agreement, provided that the same be not contrary to, and inconsistent with this Act.] In consideration of which services to be duly, honestly, carefully, and faithfully performed, the said master doth hereby promise and agree to pay to the said crew, by

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Entering the
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Sec. 23. Nothing in this Act, or in any agreement, shall prevent any seaman, or person belonging to any merchant ship, from entering into His Majesty's Navy, nor shall such entry be deemed a desertion from such ship, or incur any forfeiture of wages, clothes, or effects, or other thing; and no clause or matter shall be introduced into any ship's articles, or agreement, by which any penalty or forfeiture is agreed to be incurred by a seaman, upon his entry into His Majesty's Service.

II. ABSENCE AND DESERTION.

Refusing to
join the Ship
after signing
Agreement.

By Sec. 6 of the said Act, of the 6 W. 4, "In case a seaman shall at any time, after having signed an agreement, as herein before mentioned, neglect or refuse to join the ship on board of which he shall have engaged to serve, or shall refuse to proceed to sea in her, or shall absent himself therefrom without leave, it shall be lawful for any Justice of the Peace in any part of this Province, near to the place where such ship shall happen to be, upon complaint of the fact, made upon oath by the master, mate, or owner thereof, and such Justice is hereby required, by his warrant, to cause such seaman to be apprehended and brought before him, and in case such seaman shall not give a reason to the satisfaction of such Justice, for his neglect, refusal, or absence, as the case may be, upon due proof of such neglect, refusal, or absence, it shall be lawful for any such Justice, to commit such seaman to the county or district gaol, or to the house of correction, there to be kept to hard labour, for a period not exceeding thirty days. Provided always, that in case such seaman, on being apprehended and brought before the said Justice, shall consent to join the ship, and proceed on the voyage for which he shall have agreed, it shall be lawful for the said Justice, at the request of the master, instead of committing such seaman, to cause him to be conveyed on board the said ship, or to be delivered to the master, for the purpose of proceeding on the voyage; and also to award to the master, such costs incurred in the apprehension of the seaman, as to such Justice shall seem reasonable, not exceeding in any case the sum of two pounds, exclusive of jail fees; which shall be chargeable against, and may be abated from the wages to grow due to such seaman."

Forfeiture, on
Absence from
Duty.

Sec. 9. If any seaman, after having signed such agreement as aforesaid, or after the ship on board which he shall have agreed to serve, shall have left her first port of clearance, and before the period, for which he shall have agreed to serve,

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shall be completed, shall wilfully, and without leave, absent himself from the ship, or otherwise from his duty, he shall, (in all cases not of absolute desertion, or not treated as such by the master,) forfeit out of his wages, to the master or owner of such ship, the amount of two days' pay for every twenty-four hours of absence, and in a like proportion for any less period of time, or at the option of the said master, the amount of such expenses as shall have been incurred in hiring a substitute to perform his work; and in case any seaman while he shall belong to the ship, shall without sufficient cause, neglect to perform such his duty as shall be reasonably required of him, by the master, or other person in command of the ship, he shall be subject to a like forfeiture for every such offence, and of every twenty-four hours continuance thereof; and in case any such seaman, after having signed such agreement, or after the ship's arrival at her port of delivery, and before her cargo shall be discharged, shall quit the ship without a previous discharge, or leave from the master thereof, he shall forfeit to the master or owner one month's pay out of his wages; provided always, that no such forfeitures shall be incurred, unless the fact of the seaman's temporary absence, neglect of duty, or quitting the ship, shall be duly entered or recorded in the ship's log-book; which entry shall specify truly the hour of the day at which the same shall have occurred, and the period during which the seaman was absent, or neglected his duty, the truth of which entry it shall be incumbent on the owner or master, in all cases of dispute, to substantiate by the evidence of the mate, or some other credible witnesses."

Sec. 11. Every seaman who shall absolutely desert the ship to which he shall belong, shall forfeit to the owner or master thereof, all his clothes and effects, which he may leave on board, and all wages and emoluments to which he might otherwise be entitled,—provided the circumstances attending such desertion be entered in the log book, at the time, and certified by the signature of the master and mate, or other credible witness; and that an absence of a seaman from the ship, for any time within the space of twenty-four hours immediately preceding the sailing of the ship, without permission from the master thereof, or for any period, however short, under circumstances plainly shewing that it was his intention not to return thereto, shall be deemed an absolute desertion; and in case any such desertion shall take place in parts beyond the seas, or out of this Province, and the master of the ship shall be under the necessity of engaging any seaman as a substitute for the deserter, at a higher rate of wages than that stipulated in the agreement to be paid to the seaman deserting, the owner

Forfeitures for
Desertion.

or master of the ship shall be entitled to recover from the deserter, by summary proceeding, in the same manner as wages are by this Act made recoverable, any excess of wages which such owner or master shall pay to such substitute, beyond the amount which would have been payable to the deserter, in case he had duly performed his service pursuant to his agreement."

III. WAGES.

Liabilities of
Sureties for
Seaman.

SEC. 7. Whenever any seaman who shall have received an advance in money, on his being shipped and signing the usual agreement, and for whom any person shall have become surety, and as such subscribed the agreement by this Act prescribed and required, shall neglect or refuse to proceed on his voyage, such surety shall repay any advance made to such seaman; and if the master or owner of the ship shall be compelled to procure another seaman, and thereby be put to any increased and additional expense, beyond the wages agreed to be paid to the seaman so neglecting or refusing to proceed on his voyage, the surety, in addition to paying the advance of money made to the seaman, shall also be obliged and required to pay, and shall pay any such additional expense incurred as aforesaid; *Provided*, the said additional expense do not exceed in the whole, one half the sum of money so advanced to to such seaman, and which the surety is to return.

Signatures of
Sureties, and
actions against
them.

Sec. 8. The signature of any party becoming such surety, subscribed to the agreement, opposite to the name of the seaman for whom he shall become surety, in the proper column of such agreement, shall be sufficient, without any other agreement or contract, to render the said surety liable to the responsibilities, and for the payments herein before mentioned; and if any surety shall neglect or refuse to fulfil such responsibilities, or to make such payments as aforesaid, when thereto liable, it shall be lawful to sue such surety, in like manner and before the same Justice, Justices, or Court, as debts of the like amount are or may by law be recoverable; and on production of such agreement, and on proof of the same being properly executed by the seaman, as herein before required, and on proof of the signature and execution thereof by the surety, and also on proof of the neglect or refusal of the seaman to proceed to sea, on the voyage in such agreement mentioned, judgment shall be given against such surety, as well for the advance paid to such seaman, as for any such additional expense as may have been incurred to the extent herein before mentioned, together with costs as allowed by law in cases of debt of the like amount.

Sec. 14. Every payment of wages to a seaman shall be valid in law, notwithstanding any bill of sale or assignment which may have been made by any such seaman, of such wages, or of any attachment or incumbrance thereon; and no assignment or sale of wages, made prior to the earning thereof, nor any power of attorney expressed to be irrevocable for the receipt of any such wages, shall be valid or binding upon the party making the same.

Assignment
or Sale of
Wages.

By the before mentioned Act of the 7 W. 4, c. 56, the following enactments are made with regard to wages :

Act in amend-
ment as to
Wages.

Sec. 1. Repeals the thirteenth, sixteenth, seventeenth, and eighteenth sections of the aforesaid Act of the 6 W. 4, c. 48. [These sections relate exclusively to the payment and recovery of wages.]

Sec. 2. The master or owner of every ship, shall pay to every seaman entering into such contract as is provided in and by the said Act (of the 6 W. 4, c. 48,) the wages due to such seaman, if the same shall be demanded, within twenty four hours after the seaman shall have been discharged by the master or owner, or the cargo shall have been delivered; and in case any master or owner shall neglect or refuse to make payment in manner aforesaid, he shall for every neglect or refusal, forfeit and pay to the seaman, the amount of two days' pay, for each day, not exceeding ten days, during which payment shall, without sufficient cause, be delayed beyond the period at which such wages are hereby required to be paid as aforesaid; for the recovery of which forfeiture, the seaman shall have the same remedies as he is by law entitled to, for the recovery of his wages; Provided always, that nothing in this clause contained, shall extend to the cases of ships employed on voyages for which seamen, by the terms of their agreement, are compensated by shares in the profits of the adventure.

Forfeiture, on
neglecting to
pay Wages.

Sec. 3. In all cases of wages not exceeding twenty pounds, which shall be due and payable to a seaman for his services in any ship as aforesaid, it shall be lawful for any two Justices of the Peace in any part of this Province, near to the place where the ship shall have ended her voyage, cleared at the Custom House, or discharged her cargo, or near to the place where the master or owner upon whom respectively the claim is made, shall be or reside, upon complaint on oath to be made to such Justices, by any such seaman, or on his behalf, declaring the amount of wages due to him as aforesaid, and that the same have been demanded and refused to be paid by such master or owner, to issue a writ of attachment, in the form annexed to this Act, and to cause the same to be levied on the goods and chattels of such master or owner, and for want thereof, on the

Recovery of
Wages before
Justices.

ship in respect of the service on board which the wages are claimed, or on the tackle and apparel thereof, to be held, or sufficient bail to be taken instead thereof, to abide the event of such suit; and in and by such writ of attachment, or without such writ, if not insisted on by the plaintiff, then in and by the usual writ of summons issued by Justices of the Peace, but directed to the sheriff of the county or his deputy, to summon such master or owner to appear before such two Justices, to answer such complaint; and upon the appearance of such master, or owner, or in default thereof, on due proof under oath of his having been so summoned, such Justices are hereby empowered to examine upon the oath of the parties, and their respective witnesses, (if there be any,) touching the complaint, and the amount of wages due, and to make such order for payment thereof, with costs as hereafter provided, or discharging the defendant with his costs, as shall to such Justices appear reasonable and just; and in case such order shall not be obeyed within two days next after the making thereof, it shall be lawful for such Justices to issue their warrant in the form annexed to this Act, directed to the sheriff, or deputy sheriff of the county, to levy the amount of the wages awarded to be due, with the costs, by distress and sale of the goods and chattels of the party on whom such order for payment shall be made, rendering to such party the overplus, (if any shall remain of the produce of the sale,) after deducting thereout, all the charges and expenses incurred by the distress and levy, and in the enforcement of the Justice's order; and in case sufficient distress cannot be found, it shall be lawful for the said Justices, in and by their said warrant, to cause the amount of the said wages and expenses to be levied on the ship, in respect of the service on board which the wages are claimed, or the tackle and apparel thereof; and if such ship shall not be within the jurisdiction of such Justices, or if the costs of the defendant when awarded to him, shall not be paid, then the said Justices are hereby empowered, to cause the party upon whom the order for payment shall be made, to be apprehended and committed to the common gaol of the county, there to remain, without bail, until payment shall be made of the amount of the wages so awarded, and of all costs and expenses attending the recovery thereof; or if such party be the plaintiff, there to remain for three days, or until payment shall be made of the costs awarded to the defendant; and the award and decision of such Justices shall be final and conclusive, as well on every such seaman, as on the owner and master of the ship; Provided always, that neither of such Justices shall be anywise interested as part owner, consignee, or otherwise, in the ship,

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for the service on board which the wages are claimed, or be of kin to the owner, consignee, or master thereof.

Sec. 4. The fees to be taken in all causes before such Justices, for the recovery of seamen's wages as aforesaid, shall be as follows :

Justice's Fees.

- On Writ of Summons,—two shillings.
- On Writ of Attachment and Affidavit,—three shillings.
- On Judgment, for both Justices,—three shillings.
- On Warrant,—one shilling.
- On Subpœna,—one shilling.

Attorney's Fees.

For attending Trial, if the sum awarded be less than ten pounds,—Eleven shillings and eight pence.

If ten pounds or upwards,—one pound three shillings and four pence.

Sheriff's Fees.

For the service of every Writ of Summons,—one shilling and sixpence.

For levying under every Writ of Attachment and Service,—six shillings and sixpence.

For Attachment Bond,—three shillings.

Poundage on all monies received on Warrants,—one shilling in the pound.

For serving Warrant,—five shillings.

Travel per mile,—three pence.

For the custody of any ship, or the tackle or apparel thereof,—five shillings per day.

Witnesses' Fees.

So much as in the discretion of the Justices may be deemed proper, provided the same do not exceed two shillings and sixpence for each day's attendance, and travel per mile,—three pence.

Sec. 5. After the passing of this Act, no suit for the recovery of the wages of any seaman, for his services on board of any ship belonging to or registered in this Province, unless the same exceed twenty pounds, shall be brought in the Court

of Vice Admiralty, or in any of the Inferior Courts of Common Pleas in this Province.

Sec. 6. Provided, that any thing in this Act contained, shall not extend to any ship trading coastwise, between any port of this Province, and any other port or ports therein, or to any ship, which, by the Act passed in the fourth year of His present Majesty's reign, entitled "An Act for the support and regulation of Light Houses," is directed to pay duty under such Act, as a coasting vessel. *Perpetual.*

Directions.

As it is directed that the sums which the sureties for a seaman may be liable to pay in consequence of his default, shall be recovered in a summary manner, as debts of the like amount, the same proceedings and Forms must be used for such recovery before a Justice or Justices, as in the case of other debts sued for before them; and for which, see Title,—Summary Trials.

The Forms of the writ of attachment, and the warrant, given in the last recited Act, and the other requisite Forms relating to the recovery of wages, will be found at the end of the Title.

IV. SECRETING SEAMEN.

By Sec. 12, of the before mentioned Act of the 6 W. 4, c. 48, "If any person shall either on ship board, or on shore, harbour or secrete a seaman, who shall have signed an agreement to proceed on a voyage to parts beyond the seas, and shall have deserted or absented himself without leave from his ship, knowing, or having reason to believe him to be a deserter, or to be absent without leave, every person so offending, shall for every such seaman so harboured or secreted, forfeit and pay twenty shillings; and no debt exceeding in amount five shillings, incurred by any seaman, after he shall have signed any such agreement as aforesaid, shall be recoverable until the voyage agreed for shall have been concluded; nor shall it be lawful for any keeper of a public house, or of a lodging house for seamen, to withhold or detain any chest, bed, or bedding, clothes, tools, or other effects of any seaman, for any pretended debt alleged to have been contracted by any such seaman, and in case any such chest, bed, bedding, clothes, tools, or effects as aforesaid, shall be withheld, or detained contrary to this Act, it shall be lawful for any Justice of the Peace, in any part of this Province, upon complaint on oath to be made by any such seaman, or on his behalf, to enquire into the matter, and if he shall see right, by warrant under his hand and seal,

to cause any such property or effects so withheld or detained contrary to this Act, to be seized and delivered over to the seaman."

NOTE. The Form of a complaint of the detainer of the seaman's effects, contrary to the foregoing clause, and also of the warrant for seizing such effects, will be found at the end of the Title.

V. SICKNESS OF SEAMEN.

By Sec. 19, of the same Act of the 6 W. 4, "Every ship belonging to, and sailing from this Province, to any place out of the same, shall have and keep constantly on board the same, a sufficient supply of medicines, suitable to accidents and diseases arising on sea voyages, which shall be renewed from time to time as shall be requisite, and in case any default shall be made in providing or keeping supplied such medicines, or in case any of the seamen shall receive any hurt or injury in the service of the ship, the expense of providing the necessary surgical and medical advice and attendance, and medicines, which the seaman shall stand in need of, until he shall have been cured, or shall have been brought back to some part of this Province, shall be borne and defrayed by the owner and master of the ship, or one of them, without any deduction whatever on that account from the seaman's wages."

VI. DISCHARGING AND LEAVING SEAMEN ABROAD.

SEC. 20 of the said last mentioned Act. "No master of any ship, belonging to, or owned in this Province, shall discharge any person of his crew, whether British subject, or foreigner, at any port or place in any of His Majesty's dominions out of this Province, without the previous sanction in writing of the Governor, Secretary, or other officer appointed in that behalf by the government there, or of the principal officer of the Customs, or of two respectable merchants resident at, or nearest to the port or place where such ship shall be; nor shall he discharge any such person at any other place out of this Province, without the like previous sanction in writing of His Majesty's Minister, Consul, or Vice Consul there, or of two respectable merchants there, all which said several functionaries and merchants, are hereby authorised, in a summary way, to enquire into the grounds of any such proposed discharge, by examination on oath, and thereupon to grant or refuse such sanction, according to their discretion, having regard to the objects of this Act.

Sec. 21. No such master shall be at liberty to leave behind at any place abroad, either on shore, or at sea, any person of his crew, as aforesaid, on the plea of such person not being in a condition to proceed on the voyage, or having deserted from the ship, or otherwise disappeared, unless upon a previous certificate in writing of one of such functionaries or merchants as aforesaid, if there be any such at or within a reasonable distance from the place where the ship shall then be, if there be time to procure the same, certifying that such person is not in such condition, or has deserted or disappeared, and cannot be brought; and all such functionaries and merchants as aforesaid are hereby authorised, on the application of any such master, to enquire, by examination on oath, into the circumstances, and to give or refuse such certificate, according to the result of such examination."

VII. PENALTIES AND FORFEITURES.

Sec. 4, of the same Act. "If any master of any such ship as aforesaid, shall carry out to sea any seaman, (apprentices excepted,) without having first entered into such agreement as is hereby required, he shall for every such offence forfeit and pay the sum of five pounds, for, or in respect of every such seaman he shall so carry out, contrary to this Act; and if any master shall neglect to cause the agreement to be distinctly read over to each such seaman, as by this Act he is enjoined, he shall for every such neglect forfeit and pay the sum of five pounds; and if any master shall neglect to deposit with the Collector of the Customs, a copy of the agreement hereby required to be made and deposited as aforesaid, or shall wilfully deposit a false copy of any such agreement, he shall, for every such neglect or offence, forfeit and pay the sum of five pounds."

Manner of ascertaining forfeitures by Seaman.

Sec. 10. In all cases where the seaman shall have contracted for wages by the voyage, or by the run, and not by the month or other stated period of time, the amount of forfeitures to be incurred by seamen under this Act, shall be ascertained in manner following, that is to say: if the whole time spent in the voyage agreed upon shall exceed one calendar month, the forfeiture of one month's pay, expressed in this Act, shall be accounted and taken to be a forfeiture of a sum of money bearing the same proportion to the whole wages, as a calendar month shall bear to the whole time spent in the voyage; and in like manner, a forfeiture of two day's pay, or less, shall be accounted and taken to be a forfeiture of the sum, bearing the same proportion to the whole wages, as the same period of time shall bear to the whole time spent in the voyage; and if

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the whole time spent in the voyage shall not exceed one calendar month, the forfeiture of one month's pay shall be accounted and taken to be a forfeiture of the whole wages contracted for ; and if such time shall not exceed two days, the forfeiture of two days' pay shall be accounted and taken to be a forfeiture of the whole wages contracted for, and the master is hereby authorised to abate the amount of all the forfeitures herein before enacted, out of the wages of any seaman incurring the same."

Sec. 15. "Upon the discharge of a seaman from the ship in which he shall have served, he shall be entitled to receive from the master a certificate of his service and discharge, specifying the period of service, and the time and place of the discharge of such seaman ; which certificate shall be signed by the master ; and if any master shall refuse to give such certificate to any such seaman, without having reasonable cause for his refusal, he shall, for every such offence, forfeit and pay to him the sum of five pounds."

Certificate to
Seaman on his
discharge.

Sec. 26. All penalties and forfeitures imposed by this Act, and for the recovery whereof no specific mode is herein before provided, shall and may be recovered, with costs of suit, in manner following, that is to say,—all penalties and forfeitures not exceeding ten pounds, shall be recoverable at the suit of any person, by information and summary proceeding before any three Justices of the Peace, in any part of this Province, for the county where the offence shall be committed, or where the offender shall be, which Justices shall have full power to levy the amount of any such penalty or forfeiture, and costs, by distress and sale of the offender's goods, or by commitment of the offender, for the non-payment of the amount ; and all penalties and forfeitures exceeding ten pounds, shall and may be recovered with costs of suit in any Court of Record ; and all penalties and forfeitures mentioned in this Act, for which no specific application is herein before provided, shall, when recovered, be paid and applied in manner following,—one moiety thereof shall be paid to the informer, or person upon whose discovery or information the same shall be recovered, and the residue shall be paid over to the Commissioners or Overseers of the poor for the town or place wherein the offence shall have been committed, or the offender shall be sued. *Provided always*, that it shall be lawful for the Court before which, or the Justice or Justices before whom any proceedings shall be instituted for the recovery of any pecuniary penalty imposed by this Act, to mitigate or reduce such penalty, as to such Court or Justices respectively, shall appear just and reasonable, in such manner, however, that no such penalty shall be reduced

Manner of re-
covering and
applying pen-
alties, &c.

below one half of its original amount ; *And* provided also, that all proceedings so to be instituted, shall be commenced within two years next after the commission of the offence, or within six calender months after the return of the offender to this Province, if such offence shall have been committed without the limits thereof."

By Sec. 27, it is enacted, that this Act, and nothing therein contained, shall extend to any ship trading coastwise between any port of this Province, and any other port or ports therein, or to any ship which by the Act passed in the fourth year of His present Majesty's reign, entitled "An Act for the support and regulation of Light Houses," is directed to pay duty under such Act, as a coasting vessel. *Perpetual.*

NOTE. For the recovery of the penalties directed by the foregoing Act to be sued for before *three* Justices, the same proceedings must be observed, and the same general Forms will serve, as in other similar cases, for the recovery of penalties before Justices, for which proceedings and Forms, see respectively, Titles,—Information ; Summons ; Conviction ; Distress ; Commitment.

Form of Complaint of refusal of a Seaman to join his Ship, pursuant to Articles of Agreement :—On Sec. 6. of the foregoing Statute, 6 W. 4, c. 48.

County of } THE information and complaint of A. I., at
 { present of — in the said county, master of the
 — called the —, belonging to the port of — in this
 Province, and now lying in this port of — in the said
 county, made on oath this — day of —, in the year of
 our Lord one thousand eight hundred and —, before me,
 A. M., Esquire, one of His Majesty's Justices of the Peace
 in and for the county aforesaid.

The said deponent saith, that A. S., who has signed articles of agreement, and is now under the same, as a seaman of the said — called the —, for a voyage from the port of — in this Province, to — in the —, hath neglected and refused, and still doth neglect, to join and go on board of the said —, in order to proceed in her on the said voyage, pursuant to his said agreement. And hereupon the said A. I. prayeth the warrant of me the said Justice, to issue against the said A. S., to apprehend and bring him before me, to answer unto the said complaint.

Before me,

A. I.

A. M., J. P.

Warrant thereon.

County of } To each and every of the Constables of the
 } township of — in the said county.

[Seal.]

WHEREAS information and complaint on oath hath on this — day of —, in the year of our Lord one thousand eight hundred and —, been made before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county of —, by A. I., at present of — in the said county, master of the — called the —, belonging to the port of — in this Province, and now lying in this port of —, in the said county, that A. S., who has signed articles of agreement, and is now under the same as a seaman of the said —, for a voyage from the port of — in this Province, to — in the —, hath neglected and refused, and still doth neglect to join and go on board of the said —, in order to proceed in her on the said voyage, pursuant to his said agreement, contrary to the Statute in such case provided: These are therefore to require and command you the said Constables, and every of you, forthwith to make diligent search after, and to apprehend the said A. S., and to bring him before me, to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, at — aforesaid, the day and year first above written.

A. M., J. P.

Commitment on the foregoing complaint, on Seaman's refusal to join the Ship.

County of } A. M., Esquire, one of the Justices of our
 } Lord the King, assigned to keep the peace within
 [Seal.] the said county; To the keeper of the common
 gaol at — in the said county,—These are in His Majesty's name to charge and command you, that you receive into your said gaol, the body of A. S., a seaman belonging to the — called the —, belonging to the port of — in this Province, and now lying in this port of —, which said A. S. has been apprehended on my warrant and brought before me, on the complaint of A. I. master of the said — for neglecting and refusing to join the said ship, in order to proceed in her on a voyage from the port of — in this Province, to — in the —, pursuant to articles of agreement entered into by him the said A. S., to serve as such seaman on board of the said — for the said voyage, which said complaint hath on this day been

A. I.

duly examined into and fully proved before me, and which said A. S. still refuses to join the said —, and to serve as such seaman on board of her for the said voyage, and him the said A. S. safely keep at hard labour in the said gaol, for the space of — days, pursuant to the Statute in such case made and provided. Herein fail you not. Given under my hand and seal, at — aforesaid, on this — day of —, in the year of our Lord one thousand eight hundred and —

A. M., J. P.

NOTE. If the charge is, for refusing to proceed on the voyage, or for absence from the ship without leave, the Complaint, Warrant and Commitment, must be filled up accordingly.

Complaint of a Seaman to recover Wages : pursuant to Sec. 3 of the before recited Act, of the 7 W. 4, c. 66.

County of } THE complaint of A. S. of — in the said
 } county, mariner, made on oath this — day of —
 in the year of our Lord one thousand eight hundred and —
 before us A. M. and A. R. Esquires, two of His Majesty's
 Justices of the Peace in and for the said county.

The said deponent saith, that A. D. of — in the county of —, master of the — called the —, belonging to the port of — in this Province, is justly and truly indebted to this deponent, in the sum of — for wages due and payable to this deponent from the said A. D., as master of the said vessel, for the service of this deponent, done and performed by him as a hired seaman on board of the said vessel, on a voyage from — in —, to — in —, and that the said amount of wages hath been demanded from the said A. D., but the said A. D. hath hitherto refused to pay the same, or any part thereof, to this deponent.

A. S.

Before us,

A. M., J. P.

A. R., J. P.

If the seaman merely requires a Writ of Summons for the party complained of, the following must be the Form thereof.

County of } To the Sheriff of the said county of —, or
 } his deputy.

[Seal.]

[Seal.]

You are hereby required to summon A. D. of — in the said county, master of the — called the —, to ap-

pear before us on the — day of —, at — o'clock in the —
to answer to A. S., in the sum of —, and make return hereof
on or before said day. Witness our hands and seals, the —
day of —, in the year of our Lord —

A. M., J. P.

A. R., J. P.

Should a Writ of Attachment be required, the following is
the Form thereof, prescribed and set forth in the Statute.

Attachment.

County of } To the Sheriff of the county of — or his
} deputy.

[Seal.]

[Seal.]

THESE are to require and command you, that you
attach the goods and chattels of A. D., and for want thereof,
the ship or vessel called the —, or the tackle and apparel
thereof, to the value of —, and also that you summon the said
A. D. to appear before us, at —, on the — day of —, at
— o'clock in the —, to answer to the complaint of A. S. in
the said sum alleged to be due to him by the said A. D. for his
wages as a seaman, and make return hereof on or before the
said day. As witness our hands and seals, the — day of —
A. D.

A. M., J. P.

A. R., J. P.

The following may serve as the Form of an Order for pay-
ment of wages, on a hearing of the foregoing complaint.

County of } UPON hearing the complaint of A. S., late
} seaman on board of the —, called the —, be-
longing to the port of — in this Province, and whereof A.
D. of — is master, stating and complaining, that a sum of
money is due and owing to him the said A. S. from the said A.
D. as such master, for the wages of the said A. S., for his ser-
vices as a hired seaman of the said vessel, on a certain voyage
from — in —, to — in the —, the said A. D. hav-
ing been duly summoned to appear before us, to answer unto
the said complaint; and after due hearing and examination of
all the allegations and proofs adduced before us, touching
the said complaint, and on fully considering of the same, we
do find and adjudge, that the sum of — is justly due and
owing by the said A. D. to the said A. S., as wages for his
service as such seaman of the said vessel, on the aforesaid

A. S.

Summons for the
the Form thereof.

County of —, or

on A. D. of —
the —, to ap-

voyage. And we do, therefore, in pursuance of the Statute in such case provided, hereby adjudge and order, that the said A. D. do pay to the said A. S., the said sum of —, and also the sum of —, being for the costs of the said A. S., by him in his said suit against the said A. D., in this behalf expended, and by us taxed and allowed. Given under our hands at — in the said county, the — day of —, in the year of our Lord —.

A. M., J. P.

A. R., J. P.

Directions.

Although the Statute does not require that a copy of the order should be served on the defendant, or that any formal notice of it should be given to him, yet, in case he was not present at the hearing of the suit, and the giving of the order, it would seem to be most proper, as well as safe, that either one or the other should be done by or on behalf of the seaman, before the warrant to levy is issued, especially as by the terms of the Act, the warrant is not to issue until after the expiration of two days from the making of the order, without its being obeyed. The Justices must tax and allow to the complainant, his costs in the suit, according to the before recited table of fees set forth in the Act.

If the money is not paid within the two days after the making of the order, the following warrant must be issued, being the Form thereof given in the Act.

Warrant.

County of } To the Sheriff of the county of —, or his
 } deputy.

[Seal.]

[Seal.]

WHEREAS an order was made by us, on the — day of —, directing A. D. to pay to A. S. the sum of —, which order hath not been obeyed; These are to command and require you, to levy from off the goods and chattels of the said A. D. the said sum, with your fees, by sale of the said goods and chattels, after duly advertising the same for three days at the least. And for want thereof, you are hereby commanded to levy the said amount with your fees, on the ship or vessel called the —, or the tackle and apparel thereof, if to be found within our jurisdiction, by sale of the said tackle and apparel, or any part thereof, after duly advertising the same as aforesaid; and for want thereof, you are hereby commanded to take the body of the said A. D., and him to commit to His

Majesty's gaol in —, there to remain until he pay the sum above mentioned, with your fees, or be discharged therefrom according to law. As witness our hands and seals, the — day of —, in the year of our Lord —.

A. M., J. P.

A. R., J. P.

If the suit is against the owner of the vessel, instead of the master, the foregoing Forms must, of course, be filled up accordingly.

*Complaint of a Seaman, of his Clothes, &c. being detained :
on Sec. 12 of the 6 W. 4, c. 48.*

County of } THE information and complaint of A. S., at
 } present of — in the said county, mariner, made on oath before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, on the — day of —, in the year of our Lord one thousand eight hundred and —.

The said complainant saith, that A. O., of — in the said county, inn keeper, hath in his custody and possession, one chest of this complainant, containing the following articles of the wearing apparel of the complainant, namely, one blue cloth jacket,—[here enumerate the principal articles,] and sundry other goods of the complainant, and also hath in his said possession, the following articles of the bedding of the complainant,—one mattress, —; all which said articles the said A. O. unlawfully withholds and detains from him the said complainant, although he the complainant hath demanded the same from the said A. O.

And hereupon the said complainant requireth the warrant of me the said Justice, for seizing and delivering over to him his aforesaid goods and effects.

A. S.

Before me,

A. M., J. P.

On this complaint being made, the Justice may, if convenient, and urgency requires, send for the party complained of, and at once enquire into the matter as directed by the Act, or if time permit, and circumstances require, may issue a summons for the purpose, after the following Form :

Summons.

County of } To A. C., one of the Constables of the
 } township of — in the said county.

[Seal.]

WHEREAS complaint hath this day been made before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, by A. S., at present of — in the said county, mariner, that A. O., of — in the said county, inn keeper, hath in his possession one chest of the complainant, containing one blue cloth jacket, —, and sundry other goods of the complainant, and also hath in his possession, sundry articles of the bedding of the complainant, all of which he unlawfully withholds and detains from the said complainant, contrary to the Statute in such case provided; These are therefore to require you, forthwith to summon the said A. O., to appear before me, at my —, at — in the said county, on the — day of —, at — o'clock in the —, to answer to the said complaint, and that such further proceedings therein may be had, as are by law directed. Herein fail not. Given under my hand and seal, at —, the — day of —, in the year of our Lord —

A. M., J. P.

Warrant thereon, to seize and deliver to the Seaman his Effects.

County of } To A. C., one of the constables of the town-
 } ship of — in the said county, and to the other
 [Seal.] constables of the said township.

WHEREAS on complaint made on oath before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, by A. S. of — aforesaid, mariner, and on due enquiry and examination into the same, by and before me, pursuant to the Statute in such case provided, it duly appears to me the said Justice, that A. O. of — in the said county, innkeeper, unlawfully withholds and detains in his custody and possession, one chest of the said A. S., containing one blue cloth jacket — and sundry other goods of the said A. S., and likewise detains the following articles of the bedding of the said A. S. — contrary to the said Statute; These are therefore to authorise and require you, to make diligent search after the said chest, and other goods and effects before mentioned, and if required that you do with necessary and proper assistants, enter in the day time into the dwelling house and other premises of the said A. O., and there diligently search for the said chest and other goods of the said A. S., and if the

same or any part thereof shall be found upon such search, that you do seize and take the same into your custody, and that you forthwith deliver over the same to the said A. S., and for so doing this shall be your warrant. Herein fail not. Given under my hand and seal, at —, on the — day of —, in the year of our Lord —.

A. M., J. P.

SEARCH WARRANT, see WARRANT.

SERVANTS.

- I. APPRENTICES.
- II. HIRED SERVANTS.
- III. REGULATIONS CONCERNING APPRENTICES AND HIRED SERVANTS, BY CERTAIN STATUTES.

I. APPRENTICES.

A PAROL binding cannot constitute an apprenticeship. It must be done by deed. Infants may bind themselves, and the master may be an infant. If in the case of a voluntary binding, the person bound be an infant, he must be a party to the indentures, or he will not be bound by them; and if he be an adult, he must also be a party.

By the common law, persons under the age of twenty-one years cannot bind themselves apprentices in such manner as to entitle their masters to an action of covenant, or other action for departing the service, or other breaches of the indenture; which makes it necessary, according to the usual practice, to get some of their friends to be bound for the faithful discharge of their offices, according to the terms agreed on. But if an infant of five years of age, or other person who is not *potens in corpore*, be retained, and serve in the best manner he can, his master must pay him his wages. 1 *Burn's*, 91—2. Every indenture of an infant is voidable at his election, on his coming to the age of twenty-one years, except where the binding is under the authority of an Act of Parliament, in which case, the power of electing to vacate the indentures is taken away. *Id.* 101.

A master may by law correct and chastise his apprentice, for neglect or other misbehaviour, so it be done with moderation. *Id.* 138.

Setting to
work or bind-
ing out chil-
dren of poor
persons, &c.

By the 33 G. 2, c. 1. 1 V. 42, The Overseers of the poor of the town of Halifax shall take order from time to time, by and with the consent of two or more Justices of the Peace for the county of Halifax, for setting to work the children of all such whose parents shall not, by the said Overseers, or the greater part of them, be thought able to keep or maintain them, or any poor orphans; or by indenture to bind any such children or orphans as aforesaid, to be apprentices where they shall see convenient, till such man child shall come to the age of twenty-one years, and such woman child to the age of eighteen years, or the time of her marriage; the same to be as effectual to all purposes, as if such child were of full age, and by indenture of covenant had bound him or herself. *Provided always*, that one of the conditions of said indentures shall be, that if the said master or mistress of said apprentice, or other person to whom said indenture may be assigned, shall transport or carry said apprentice out of this Province, to reside or dwell in any other colony or plantation, then the said indenture shall be void, and the said apprentice shall thenceforth be discharged from any further service to his said master, mistress, or assigns.

By the 3 & 4 G. 3, c. 9. 1 V. 96, The said clause, relating to the binding out poor children and orphans, and all the directions therein contained, shall extend, and be construed to extend, to all the other towns in this Province. *Perpetual*.

By the 43 G. 3, c. 3. 1 V. 469, The Commissioners of the poor for the town of Halifax are empowered to bind out poor children, apprentices, without consent of magistrates, subject, however, to all other restrictions and limitations prescribed by law. *Perpetual*.

Assigning Ap-
prentices.

By the 5 G. 3, c. 7. 1 V. 115, Before any inhabitant of this Province shall accept of the assignment of the indenture of an apprentice, or servant, contracted with in any other part of His Majesty's dominions, he shall go with the parties before one Justice or more, who shall examine whether the indenture be executed agreeable to law, and whether the apprentice or servant has any legal objection to such assignment, and shall determine the validity of such objections; and record a certificate of such judgment in the matter.

II. HIRED SERVANTS.

Retainer and
Service.

If a person retain a servant generally, without expressing any time, the law shall construe it to be for one year, for that retainer is according to law. If a woman who is a servant shall marry, yet she must serve out her time, and her husband cannot take her out of her master's service; for her marrying

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is not a misdemeanor, and nothing else is a cause of discharge. *5 Burn's*, 114.

If a servant, retained for a year, happen within the time of his service to fall sick, or to be hurt or disabled by the act of God, or in doing his master's business, yet the master must not therefore put such servant away, nor abate any part of his wages for such time. Sickness does not put an end to the service on the part of the servant. *Id.* 115.

The master is allowed by law, with moderation to chastise his servant, being under age, but if the master or mistress beat any servant of full age, it may be a good cause of discharge, on complaint to the Justices. *Id.* 121. [NOTE. See the Provincial Statute hereafter recited, by which two Justices may discharge a servant on complaint and proof of ill usage, being similar to the English Statute on the subject.]

If the servant shall depart out of his master's service, and the master happen after to lay hold of him, yet the master may not beat, or forcibly compel his servant against his will to return, or tarry with him, or do his service, but either he must complain to the Justices for his servant's departure, or he may have an action of covenant against his servant. *Id.* 121.

A servant may justify an assault in defence of his master. *Id.* 122. Also a master in defence of his servant. 1 *Schw. N. P.* 32.

It has been held, in a case of a servant hired by the year, who refused to obey his master's orders, that the master was justified in dismissing him before the end of the year, and that the servant could not recover any part of his wages; for the year's service must be completed before the servant is entitled to be paid. A master may discharge his servant at a moment's warning, for misconduct, (e. g. for being absent when wanted, sleeping from home at night without his master's leave, &c.) and in such case the servant will only be entitled to such wages as are due at the time of his discharge. But if the servant has not been guilty of misconduct, and the master discharges him without warning, the servant in that case will be entitled to a month's wages beyond the wages due for the period of actual service. A master is justified in discharging a servant, for debauching or having a criminal intimacy with a female servant, while both are serving in the family. *5 Burn's*, 162.

If a servant of his own accord, depart from his master, before his time expires, he shall lose all his wages; but if he depart with the consent of his master, he shall have his wages for the time he served. *Id.* 183.

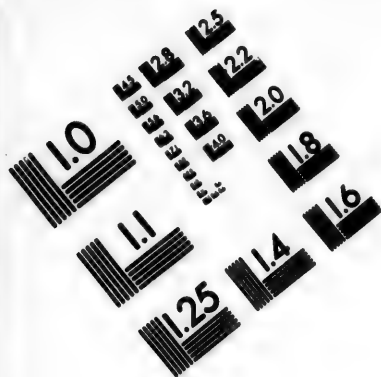
When a Magistrate discharges a servant from the service of his master, it must appear on the face of the order itself, to be a case within the jurisdiction of the Magistrate. *Id.* 163.

Chastising
Servants.

Departing
from service.

Discharging
Servants.





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Liabilities of
Master for
acts of ser-
vant.

The master is indictable for a nuisance done by his servant; as for throwing dirt in the highways. And it seems that the servant also is indictable, for a servant is not excused the commission of any crime by the command or coercion of his master. If a servant commit a trespass by the command or encouragement of his master, the master shall be guilty of it, though the servant is not thereby excused, for he is only to obey his master in matters that are honest and lawful. A master is not liable in trespass for the wilful act of his servant, as by driving his master's carriage against another, done without the direction or assent of the master. But he is liable to answer for any damage arising to another, from the negligence or unskilfulness of his servant, acting in his employ. *Id.* 174.

III. REGULATIONS CONCERNING APPRENTICES AND HIRED SERVANTS, BY CERTAIN STATUTES.

1. Contract of Hiring.

By the Statute of the 28 G. 3, c. 6. 1 V. 255, "No person whatsoever in this Province shall hire a man or maid servant for any longer term than one month, unless a memorandum of such hiring shall be made in writing, and signed by both parties, in presence of one witness at least, who shall read and explain the same to both parties, which memorandum shall specify the period for which such servant shall have agreed to serve, and the wages or other considerations which he or she is to receive for his or her service; and all verbal agreements between master and servant, for a longer period than one month, are hereby declared to be null and void.

Sec. 6. All persons having servants bound to them by the voluntary acts of such servants, may sell or assign the unexpired terms of such servants, and the assignee or purchaser shall be as fully entitled to the entire service and labour of such servant, as the person who assigned the same. Provided such assignment shall be made in the presence of, and with the approbation of three Justices of the Peace, and security given, if required, not to carry such servant out of the Province." *Perpetual.*

2. Desertion and Misbehaviour of Servants.

By the 5 G. 3, c. 7. 1 V. 114, All bound or hired servants, who shall desert or absent themselves from their master or mistress's service, shall be liable to make satisfaction, by service, after the time by indenture or agreement is expired,

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double their time of service so neglected; and if the time of their desertion or absence was at seed time, or harvest, or during the fishing season, and the charge of recovering them extraordinary, the General Sessions of the Peace before whom the complaint shall be made, shall adjudge a longer time of service, proportionable to the damage the master shall make appear he hath sustained.

Sec. 4. The master or mistress of any servant, so deserting or absenting themselves, that intends to take the benefit of this Act, shall, so soon as he or she hath recovered such servant, carry him or her to some one Justice of the Peace, and there declare and prove the time of his or her absence, and the charge he hath been at in his or her recovery; which Justice thereupon shall grant his certificate thereof, and the Court shall and may, on such certificate, pass judgment for the time such servants shall serve, for his or her absence." *Perpetual.*

Mode of obtaining satisfaction for desertion, &c.

By the 28 G. 3, c. 6. 1 V. 255, "It shall be lawful for any one Justice of the Peace, on complaint made by the master or mistress, of any servant hired by him or her, either verbally or by writing, that such servant has wilfully misbehaved, to enquire into the merits of such complaint; and if such Justice shall find the same to be well founded, it shall be lawful for such Justice, to order a reasonable part or portion of such servant's wages, or other emoluments, to be stopped in the hands of the master or mistress, provided such stoppage for any one offence shall not exceed the sum of five shillings.

Misbehaviour.

Sec. 7. It shall be lawful for the Justices in Sessions for each county or district, and they are hereby directed, from time to time, to make further orders and regulations for the better government and more effectual correction of disobedient or refractory servants, within their respective jurisdictions, and also for the apprehending all runaway servants, and conveying them to their proper masters and mistresses." *Perpetual.*

3. *Ill treatment of Servants.*

By Sec. 5, of the before mentioned Statute, 5 G. 3, c. 7. 1 V. 114, Every master or mistress shall provide for his or her servant, according to the tenor of their agreement, and any bound or hired servant, having just cause of complaint against his or her master or mistress, for cruel and bad usage, may and shall, on application to two Justices of the Peace, be heard concerning the same; provided such complaint be made within a reasonable time, not exceeding ten days after the cause given, unless such servant is prevented by his or her

master or mistress, or by sickness ; and if the said Justices shall find by sufficient proof, that the said servant's cause of complaint is well founded, the said Justices are hereby required to make an order for the relief of such servant, by discharging him or her from their service, or otherwise, as they may see fit ; and if either party shall not be satisfied with the order of the said two Justices, they may appeal to the next Court of General Sessions of the Peace, where the matter shall be finally determined. *Perpetual.*

4. *Harbouring and detaining Servants.*

By Sec. 6, of the said last mentioned Act, " No master of any private ship, or vessel of war, or master of any merchant ship or vessel, coming into, tarrying or abiding in, or going forth from any port, harbour, or place within this Province, shall receive, harbour, entertain, conceal, or secure on board such ship or vessel, or suffer to be there harboured or detained, any bound or hired servant as aforesaid, knowing them to be such, without license or consent of his or her master or mistress, in writing under his or her hand first had and obtained, on pain of forfeiting ten pounds for every such offence ; which forfeiture shall be applied and disposed of, as is directed in and by the first clause of this Act, and shall be recovered by bill, plaint, or information, in any Court of Record in this Province." *Perpetual.*

5. *Incapacity of Servant in the Fishery.*

By Sec. 8, of the said last mentioned Statute, " If any servant shall engage and contract himself with any person or persons carrying on the fishery, in the capacity of a salter, splitter, or shoresman, and shall upon trial be found incapable, and unqualified to discharge the duty of the station for which he shall have contracted himself, such servant, upon due proof of his incapacity, before any one Justice of the Peace, shall forfeit and lose all wages due to him for his service in such employment, whereof he shall be so found incapable.

6. *Selling Spirituous Liquors to Servants.*

By Sec. 3 of the before mentioned Statute of the 28 G. 3, c. 6. 1 V. 255, If any master or mistress shall sell rum, or other spirituous liquors, to any servant hired by him or her, such master or mistress shall forfeit and pay, for each and every such offence, on conviction before any one Justice of the

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Peace, double the value of such rum, or other spirituous liquors; and it shall not be lawful for any master or mistress, to stop the wages or any part thereof, of any servant or labourer in his or her service or employment, for or on account of any rum, or other spirituous liquors sold to such servant or labourer, while in his or her service or employment.

Sec. 4. All notes, bills, specialties, or agreements whatever, which shall hereafter be given to any person or persons whatsoever, by any servant or common labourer, if it shall appear that any part of the sum due or secured by such bond, note, bill, specialty, or agreement, was given for or on account of any rum, or other spirituous liquors, the same, and every part thereof, shall be void and of none effect; and all accounts or contracts, on which suits may be brought against any servant or common labourer, in which shall appear any charge, made directly or indirectly, for rum, or other spirituous liquors, the whole of such account or contract shall be null and void; and the party suing the same shall become nonsuit.

Sec. 5. If any tavern keeper or retailer, shall by himself or any other person, buy, purchase, or receive in pawn, any wearing apparel, tools or implements of trade, or husbandry, or any household goods, or furniture made up, from any servant, or common labourer, such tavern keeper or retailer shall forfeit and pay for every such offence, a sum not exceeding forty shillings, and the bargain, sale, or pawning, shall be *ipso facto* void; and the articles so purchased or received, be immediately restored, or double the value thereof, on pain of imprisonment not exceeding one month, at the discretion of the Justice or Justices before whom complaint shall be made."

Perpetual.

NOTE. For directions and Forms, in prosecutions for any of the offences mentioned in the foregoing clauses, see respectively, Titles,—Information; Summons; Conviction; Commitment. And for further regulations as to the sale of spirituous liquors to servants, see Titles,—Spirituous Liquors, and Taverns.

7. Certificate of Service and Discharge.

By the aforesaid Statute of the 5 G. 3, c. 7. 1 V. 113, "All servants bound by indenture, or hired servants for any time not less than six months, at the expiration of the term for which they were bound or hired to serve, shall have from their master or mistress, a certificate or discharge of such servants having served his or her time, which shall be a sufficient

warrant for any person to entertain or take such servant into his or her service, and the person hiring such servant, shall take his or her certificate or discharge, and keep it until the time then contracted for be expired; and if any person shall knowingly take into his or her service, or knowingly harbour or entertain any person who has been in any former service, without such certificate or discharge, such person, being thereof convicted, at the General Sessions held for the county or place where such offence was committed, shall forfeit ten pounds; to be levied by distress and sale of the offender's goods and chattels, by warrant from such General Sessions; one moiety of which forfeiture shall be to the poor of the township where the offender resides, and the other moiety to the informer, who shall discover and prosecute the same.

Sec. 2. Provided always, that in case any person shall refuse to give his or her servant a certificate or discharge as aforesaid, such servant may apply to some neighbouring Justice of the Peace, of the county wherein such master or mistress inhabits, who shall give notice to the master or mistress of such servant, and require from them respectively, the reason why such servant is refused such discharge and certificate of his or her service; and in case no regard be paid to such notice, within five days, or that the Justice shall sooner, by a reply to such notice, find that the cause of the refusal of such discharge or certificate was not sufficient, the said Justice is required to give a certificate thereof, or of such reasons as the master or mistress gave for refusing such discharge or certificate, that such person who is about to hire such servant, may be apprized of such servant's behaviour, and judge thereof, before he or she hires such servant; for which certificate no fee shall be paid; and the said certificate shall be as good as if the same had been given by such master or mistress; and any servant who shall be convicted of counterfeiting, or producing a counterfeit certificate under the hand of any master or mistress, or Justice of the Peace, by the oath of one or more witnesses, or by such servant's own confession before two Justices of the Peace, shall be publicly whipped at the discretion of such Justices." *Perpetual.*

Complaint of a Master against a Servant for Misbehaviour;
on the 28 G. 3, c. 6.

County of } Be it Remembered, that this — day of —
in the year —, A. C. of — in the county
aforesaid, husbandman, [or as the case may be,] complaineth
before me A. M., Esquire, one of His Majesty's Justices of

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the Peace in and for the said county, that A. S., late of — aforesaid, in the said county, servant in husbandry to him the said A. C., hath in his said service been guilty of a certain wilful misbehaviour towards him the said A. C., in that he the said A. S., [here set forth the particular offence,] and thereupon he the said A. C. prayeth that justice may be done.

A. C.

Before me,

A. M., J. P.

Warrant for the Servant thereupon.

County of } To A. B., one of the constables of the
township of — in the said county.

WHEREAS information and complaint hath been made before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, by A. C. of — in the said county, husbandman, [or as the case may be,] against A. S. late of — aforesaid, in the said county, servant in husbandry to him the said A. C., that he the said A. S. hath in his said service been guilty of a certain wilful misbehaviour towards him the said A. C., in that he the said A. S. [here set forth the particular offence.] These are therefore to command you forthwith to bring the said A. S. before me, to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal the — day of —, in the year of our Lord one thousand eight hundred and —.

A. M., J. P.

Order thereon for abatement of Wages.

County of } WHEREAS information and complaint hath been
made before me A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, by A. C. of — in the said county, husbandman, against A. S. late of — aforesaid, servant in husbandry to him the said A. C., that he the said A. S. hath in his said service been guilty of a certain wilful misbehaviour towards him the said A. C., in that he the said A. S. [here set forth the particular offence.] And whereas in pursuance of the Statute in such case made, I have duly examined the proofs and allegations of both the said parties, touching the matter of the said complaint, and upon due consideration had thereof, have adjudged and determined, that he the said A. S. hath in his said service been guilty of a certain wilful misbehaviour towards him the said A. C. in that he the said A. S. [here set forth the particular offence.]

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And I do therefore convict him the said A. S. of the said offence, in pursuance of the Statute in that case provided; and I do therefore hereby order, as a punishment for the said offence, that the said A. C. shall stop and retain in his hands, from the wages to be paid by him to the said A. S. the sum of —. And I do hereby discharge the said A. C. from the payment of the said sum of —, as part of the wages of him the said A. S. Given under my hand and seal, the — day of — in the year of our Lord —.

A. M., J. P.

Complaint of a Servant against the Master, for ill usage; on the 5 G. 3, c. 7.

County of } BE it Remembered, that this — day of —
 } in the year —, A. S. of — in the county aforesaid, husbandman, [or artificer, handicraftsman, butler, coachman, &c., as the case may be,] complaineth to us A. M. and A. R., Esquires, two of His Majesty's Justices of the Peace in and for the said county, that on the — day of — last past, in the year of our Lord —, he the said A. S. was hired, [or bound as the case may be,] by and to A. O., of — in the county aforesaid, yeoman, [or — as the case may be,] to be servant in husbandry, [or artificer, &c. as the case may be,] to him the said A. O. for the space of —, and that he the said A. S. did accordingly on the said — day of — aforesaid, enter upon, and afterwards until this present time hath continued, and doth continue in the said service, and that he the said A. O., during the said service, hath inflicted on him the said A. S. cruel and bad usage, and particularly, [here set forth the special offences.] And thereupon the said A. S. prayeth that justice may be done in the premises.

Before us, A. S.

A. M., J. P.

A. R., J. P.

Summons of the Master on the foregoing Complaint.

County of } To A. B. one of the Constables of the town-
 } ship of — in the said county.

[Seal.]

[Seal.] WHEREAS complaint hath been made unto us A. M. and A. R., Esquires, two of His Majesty's Justices of the Peace in and for the said county, by A. S. of — in the said county, husbandman, [or artificer, &c. as the case may be] that on the — day of —, last past, in the year —,

he the said A. S. was hired, [or as the case may be] by and to A. O. of —, in the county aforesaid, yeoman, [or — as the case may be] to be servant in husbandry, [or artificer &c. as the case may be,] to him the said A. O., for the space of —; and that he the said A. S. did accordingly, on the said — day of — aforesaid, enter upon, and afterwards until this present time hath continued and doth continue in the said service; and that he the said A. O., during the said service, hath inflicted upon the said A. S. cruel and bad usage, and particularly, [here set forth the special offences.] These are therefore to require you, in His Majesty's name, to summon the said A. O. to appear before us, on — next, at the house of — in — in the said county, at the hour of — in the forenoon of the same day, to answer unto the said complaint, and be you then there to certify what you shall have done in the execution hereof. Given under our hands and seals, the — day of —, in the year of our Lord —

A. M., J. P.

A. R., J. P.

Discharge of the Servant thereupon.

County of } WHEREAS complaint hath been made unto us,
 { A. M. and A. R., Esquires, two of His Majesty's
 Justices of the Peace in and for the said county, by A. S., of
 — in the said county, husbandman, [or artificer, &c. as the
 case may be,] that on the — day of — last past, in the year
 —, he the said A. S. was hired, [or bound, as the case may
 be,] by and to A. O., of — in the county aforesaid, yeoman,
 [or —, as the case may be,] to be servant in husbandry, [or
 artificer, &c. as the case may be,] to him the said A. O., for
 the space of —, and that he the said A. S. did accordingly,
 on the said — day of — aforesaid, enter upon, and after-
 wards until this present time hath continued, and doth continue
 in the said service; and that he the said A. O., during the
 said service, hath inflicted upon the said A. S. cruel and bad
 usage, and particularly, [here set forth the special offences.]
 And whereas the said A. O., in pursuance of our summons for
 that purpose, hath appeared before us, to answer unto the said
 complaint, but hath not proved that he is not guilty of the said
 complaint and charge, but on the contrary, it hath been fully
 and duly proved before us, upon oath, to our satisfaction, that
 he the said A. O. hath inflicted upon him the said A. S. cruel
 and bad usage in his service as aforesaid, and particularly,
 [here set forth the special offence or offences.] — [Or if the

master neglects to appear on the summons, then say.] And whereas it appears to us, upon the return of A. B., one of the Constables of — aforesaid, that he the said A. B., by virtue of our precept to him directed, did duly summon him the said A. O., to appear before us at a reasonable time therein prefixed, to answer unto the said complaint, and he the said A. O. hath neglected to appear according to the said summons; and whereas it hath been fully and duly proved before us, upon oath, to our satisfaction, that he the said A. O. hath inflicted cruel and bad usage upon him the said A. S., in his service as aforesaid, and particularly, [here set forth the particular offence or offences]; we do therefore hereby order, in pursuance of the Statute in that case made and provided, that he the said A. S. be discharged, and we do hereby discharge him the said A. S. from his said service. Given under our hands and seals, the — day of —, in the year of our Lord —

A. M., J. P.

A. R., J. P.

SESSIONS.

As the present Work is chiefly designed for the use of Magistrates, when acting out of Sessions, and it is desirable to confine it within the most moderate limits, consistent with that object, the Court of General Sessions, or the proceedings therein, will not be treated of under this Title. Moreover, it is considered unnecessary to do so, as there are gentlemen of legal knowledge presiding in those Courts, and time and facilities are there afforded for collective and mature consideration, which are seldom allowed to Magistrates acting on other occasions; and especially, because in the General Sessions a reference can be had to all the Provincial Statutes, as well as to that most valuable work,—Burn's Justice, and other useful treatises of the same nature. This Title, therefore, only relates to Special Sessions, and the proceedings therein.

A Special Sessions means a sitting convened by reasonable notice to the other Magistrates of the division. Any occasional sitting of two Magistrates is not a Special Sessions. See 5 Burn's, 215.

There must always be at least two Justices present to constitute a Special Sessions; or more, according as may be required by any particular Statute. By various Statutes of the Province, Justices of the Peace are empowered to hold a Special

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Sessions for especial purposes, as for trying simple larcenies, and other lesser criminal offences,—for making regulations for bringing lumber down rivers,—hearing appeals against rates,—examining as to performance of contracts relating to roads and bridges, &c. &c.

A Justice of the Peace ought not to join in an order in Sessions wherein himself is concerned. An order may be quashed for that reason. *See 5 Burn's, 199.*

By the 26 G. 3, c. 2. 1 V. 243, It shall and may be lawful for the Justices of the Peace, in their respective towns and counties within this Province, or any three of them, one whereof shall be of the quorum, to call a Special Court, or Courts of Sessions, between the stated times limited by law for holding the said Courts, and proceed either by indictment, or in a summary way, by motion and order, to the trying and determining of all criminal offences which come under the denomination of simple larceny, or do not extend to life or limb. Provided always, that it shall not be lawful for said Justices to pass sentence, or inflict punishment on such offenders, unless they shall be first convicted at such Court by the verdict of a Jury, duly impannelled and sworn for that purpose. *Perpetual.*

Special Sessions to try Simple Larcenies, &c.

By the 46 G. 3, c. 15. 2 V. 6, "In every Special Sessions of the Peace which may by law be held, the particular business for which such Special Sessions shall have been called, (and which shall always be specified and declared at the call thereof,) shall only be done and transacted, any law or usage to the contrary notwithstanding." *Perpetual.*

NOTE. At least eight days' notice ought to be given of the holding of a Special Sessions.

With regard to the regulations for enforcing the attendance of Justices in the General Sessions, and depriving them of their office on neglect thereof, and for their attendance at the sittings of the Supreme Court, see division No. 5, of the Title—Justices.

SET OFF, see,—SUMMARY TRIALS.

SEWERS.

By the Statute of the 4 G. 4, c. 13. 3 V. 156, The Governor may appoint Commissioners of Sewers, who shall be

Assessments
for Repair of
Dykes, &c.

Recovery of
Dyke Rates.

Letting Lands
for Payment
of Rates.

Selling Lands
for Payment
of Rates.

Repairing In-
jury to Dyke
by Pasturing.

sworn to the faithful discharge of their duty, and such commissioners may from time to time assess the proprietors of dyked and marsh lands, for the repair of dykes and wears, and for certain other purposes relating to such lands, and shall appoint collectors to collect the money due on such assessments, who shall also be sworn as aforesaid.

Sec. 3. Upon complaint being made upon oath before any one Justice for the county where such lands lie, by such collector or collectors, it shall be lawful for such Justice to grant a warrant under his hand and seal, directed to any one of the constables in the county, to levy off and from the goods and chattels of the person or persons neglecting or refusing to pay his or their part or proportion of such assessment, by distress and sale of the said goods and chattels, the full sum so assessed, with costs for prosecuting the same, which costs shall not in any one case exceed ten shillings.

Sec. 4. If goods or chattels of the owner or possessor of lands dyked, drained, or improved, are not to be found within the county or district where such lands lie, to answer his, her, or their proportion of the assessment made as aforesaid, it shall be lawful for any one Justice for the county to let the same, or so much thereof as may be sufficient to pay such proportion, first giving twenty days' notice in the township or place where the lands lie.

By Sec. 9, If no person shall appear, to pay the proportion of any assessment, and no sufficient distress shall be found to satisfy the same, the Commissioners, after three months' notice of the sale of the said lands of the person so assessed, and such proportion being still unpaid, shall sell at public auction, to the highest bidder, so much of such delinquent's said lands as will be sufficient to pay such proportion, with the charges.

Sec. 13. When any person shall pasture any part of the land enclosed within any common, dyke, or any land without and adjoining such dyke, whereby any part of the dyke shall be injured, it shall be lawful for any two or more of the commissioners, as often as there shall be occasion, to make an order upon such person for the repairing of such injury, by a certain day named in such order, and in case of refusal to obey the same, such Commissioners shall cause the injury to be forthwith repaired.

Sec. 14. The person neglecting or refusing to obey any such order, shall forfeit and pay for each offence the sum of ten shillings, which sum, with the costs of such repair, to be recovered before any one Justice for the county, shall from time to time be levied by warrant of distress under the hand and seal of such Justice. *Perpetual.*

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By the 10 G. 4, c. 37. 4 V. 64, Where the assessment shall be more than five shillings per acre, no warrant of distress shall issue against any party owning or possessing dyked marsh land, on account of any assessment made upon the said land, unless such party, or some other or former owner of such land, shall have assented to the building of the dyke for which the assessment was made; but in all cases, whether such consent hath or hath not been given, the land of every such actual owner or possessor, shall be liable to such assessment, and may be proceeded against in the manner provided in the ninth Section of the aforesaid Act of the 4 G. 4, c. 13, without previously issuing such warrant of distress.

Sec. 2. After the issuing of a Warrant of Distress against a party who did not assent to the assessment, the Commissioners may discontinue proceedings against him; without their being liable to costs.

Sec. 3. The oath by the aforesaid Act of which this is in amendment, directed to be administered to the said Commissioners of Sewers, Collectors, Assessors, and other persons therein named, shall be made in writing by the party required to make the same; and this oath shall be administered by some Justice of the Peace, in the presence of the Clerk of the Peace for the county or district wherein such commissioners have jurisdiction. *Perpetual.*

By the 5 W. 4, c. 47. 4 V. 482, In any cause or proceeding in any Court in the Province, or before any Justice or Justices of the Peace, wherein it may be necessary to examine any clerk to Commissioners of Sewers, or collector, as a witness, it shall be lawful for such clerk or collector, to be examined as a witness, to prove any fact or facts arising from, or connected with the execution of the duties of such clerk or collector, notwithstanding such clerk or collector may be a proprietor, or interested of and in the lands included in any such assessment, touching which, or any rate thereon, or any proceeding taken for enforcing the same, any suit or question be depending; provided that no such clerk or collector shall be a witness in any matter touching the taxes upon their own lands, or themselves respectively. *Temporary.*

The proceedings and the Forms for the recovery of any dyke rates, will be the same as in the case of poor rates, or county rates, for which, see either of those Titles. For the recovery of the penalty, and the other sum mentioned in the 14th clause of the aforesaid Act of the 4 G. 4, the like proceedings must be had, as for the recovery of penalties and sums in other cases of the like nature, for which proceedings, with the general Forms requisite, see respectively, Titles,—Information; Summons; Conviction; Distress.

Recovery of Assessment above five shillings per acre.

Oath of Commissioners and others.

Clerks and Collectors may be Witnesses.

Directions.

SHEEP.

Driving away
Sheep clau-
destinely.

By the Statute of the 19 G. 3, c. 7. 1 V. 215. The Justices of the Peace in each county or township, empowered to hold Sessions of the Peace, shall be empowered in their Sessions as aforesaid, and they are hereby directed, to make regulations for the preventing the clandestine driving or carrying away sheep and lambs, from the several townships in such counties, in manner as shall be most agreeable to the circumstances of such county, or townships therein, and any person who shall transgress such regulations, shall forfeit and pay a fine not exceeding five pounds, to be recovered on complaint or information, before any two Justices of the Peace for the county wherein the offence was committed, or before the Sessions in such county or township, and be levied by warrant of distress on the offender's goods and chattels, and be applied to the use of the poor of the township where the offence was committed. *Perpetual.*

Keeping dogs
accustomed to
kill, or worry
Sheep.

By the 34 G. 3, c. 2. 1 V. 331. If any person shall keep any dog, which hath been known to kill, or accustomed to worry sheep or lambs, after notice thereof, such person shall forfeit and pay ten shillings to the owner of every sheep or lamb so killed as aforesaid, and shall also forfeit and pay three pounds for every offence, to be recovered before any Justice of the Peace for the county where the offence was committed; the one moiety thereof for the use of the poor of the township or place where the offence was committed, and the other moiety to the person or persons prosecuting for the same. *Perpetual.*

The proceedings and Forms for the recovery of the penalties mentioned in the foregoing Statutes, will be the same as in prosecutions in other ordinary cases for the recovery of penalties, for which, see respectively, Titles, — Information; Summons; Conviction; Distress.

SHERIFF.

By the 35 G. 3, c. 1. 1 V. 344. The Chief Justice, or in his absence, the senior Judge of the Supreme Court, shall annually, on the last day of Michaelmas Term, nominate to the Governor, three fit persons in each county, as qualified for the office of High Sheriff thereof; one of whom in each county, the Governor shall appoint to be such Sheriff, for the year en-

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suing, who, on refusal to serve, shall forfeit fifty pounds; and if he accepts the office, shall give security, and be sworn to discharge the duties thereof.

Sec. 4. It shall be lawful for the said Chief Justice, or senior Judge as aforesaid, in the said list of persons presented to the Governor as aforesaid, to return over again the name of such person as shall be then in the office of sheriff for any county, in case such person shall have signified to such Chief Justice or senior Judge, his consent in writing to serve for the ensuing year; unless a representation signed by a majority of the Justices, in their General Sessions assembled in any county, shall be filed in the Supreme Court at Halifax, as of any Michaelmas term hereafter ensuing, praying thereby, that the person then serving the office of sheriff in such county, may not be returned in the Judges' list to serve the office of sheriff for the then ensuing year; in which case the Judge, who is to return such list, shall not return the name of such person so petitioned against. *Perpetual*

The Sheriff, having the warrant of a Justice of the Peace directed to him, shall execute the same, but he need not go in person to execute it, but may authorise another to do it. And it is no excuse to the sheriff to return that he could not execute a precept, because of resistance, for he may take with him the power of the county.

The Sheriff, on summons, is bound to attend the Sessions of the Peace there to return his precepts,—to take charge of the prisoners,—to receive fines for the King, and the like. And it seems clear from the general reason of the law, which gives all Courts of Record a kind of discretionary power over abuses by their own officers, that the Sheriff is punishable by the Justices in Sessions, for defaults in executing their writs and precepts. Every sheriff is a principal conservator of the peace, by the common law, and may *ex officio*, award process of the Peace, and take surety for it. 5 Burn's, 223-4.

Sheriff shall execute the Warrant of a Justice.

Shall attend the Sessions.

Is punishable by the Sessions.

SHIPS.

By the 25 G. 3, c. 6. 1 V. 241, Any person who shall take away, cut down, or destroy, or aid or assist in taking, cutting down, or destroying in any manner whatever, such buoys, beacons, or sea marks, which are placed, or shall be placed or set by order or direction of the Governor, Lieutenant Governor, or Commander-in-chief, or any other person having authority so to do, in any harbour, creek, or bay within

Destroying Beacons, &c.

the Province, shall, on due conviction thereof, by the oath of one credible witness, before two Justices of the Peace, forfeit and pay the sum of one hundred pounds; and on failure of payment thereof, or of goods or chattels belonging to the offender, whereon to levy the same, such offender shall be committed by such Justices, to the gaol of the county or place where the offence shall have been committed, for the space of twelve months.

Sec. 2. Any person who shall make fast to any such buoy, or sea mark, any ship, vessel, or boat, shall, on due conviction thereof as aforesaid, pay a sum not exceeding twenty pounds; and on failure of payment thereof, or of goods or chattels belonging to the offender, whereon to levy the same, such offender shall be committed by such Justices, to the gaol of the county or place where the offence shall have been committed, for a space not exceeding six months. *Perpetual.*

The proceedings for the recovery of the penalties imposed by the foregoing Statute, will be the same as in similar cases before Justices, and together with the requisite Forms, which may readily be filled up so as to serve, will be found respectively, under the Titles,—Information; Summons; Conviction; Distress; Commitment.

Improperly
unloading Bal-
last.

By the 33 G. 3, c. 3. § 1 V. 315, No ballast shall be unladen or thrown overboard from any ship, vessel, or boat, below high water mark, into any port, harbour, river, or creek within this Province, or at the entrance into the same; and if any master or seaman, or other person on board any ship, vessel or boat, shall unlade or throw from on board any ship, vessel, or boat, any ballast, below high water mark, into any port, harbour, creek, or river, or at the entrance of the same, such master, seaman, or other person, shall be obliged to remove such ballast or impediment, or in default thereof shall forfeit and pay a sum not exceeding twenty-five pounds, to be sued for and recovered, by information or complaint, before any two Justices of the Peace for the county wherein such offence shall be committed; subject to an appeal to the Court of Common Pleas in and for the county wherein such offence shall be committed, upon security given for prosecuting the same to effect. *Perpetual.*

NOTE. The proceedings for the recovery of the penalty in this Statute, will be the same, until after conviction, as in similar cases, and with the Forms, which may be filled up so as to serve, will be found under the respective Titles,—Information; Summons; Conviction. As no final process of any kind, for levying the penalty, is directed or alluded to in the

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Statute, it seems quite clear, that no such process can be issued by the Justices.

SHIPWRECK, see WRECK.

SHOOTING AT, &c. (MALICIOUSLY.)

By Section 21, of the 32 G. 2, c. 13. 1 V. 18, "Who-soever shall maliciously shoot at any person or persons, in any dwelling house or other place, such offender or offenders, being duly convicted thereof, shall suffer as felons without benefit of clergy." *Perpetual.*

On a complaint of this offence being made to a Justice, the same proceedings must take place as in other cases of capital felonies; and for which, with the requisite Forms, see, respectively, Titles,—Information; Warrant; Examination; Commitment; Recognisance. Justices of the Peace cannot bail persons charged with this offence, it being a capital felony,

SHOP-BREAKING, see,—BURGLARY.

SLANDER.

In general, it seems that words which directly tend to a breach of the peace, as if one man challenge another, are cognisable before Justices of the Peace; for which the party may be bound to the good behaviour, and even indicted. *5 Burn's*, 243. [NOTE. This means *cognisable*, or to be determined before the Justices in Sessions, but not before one Justice or more out of Sessions, though one Justice may bind over to the Sessions, on a complaint of such offence.] But if the words do not tend directly to a breach of the King's peace, but are matters only of private slander between party and party, which no way affect the public administration of justice, as in case where the common people are wont to call one another knaves, and rogues, and whores, and thieves, it is not asserted by any good authority, that Justices of the Peace have any jurisdiction at all in such matters. *Id.*

SMUGGLING, see REVENUE.

SOLDIERS.

By the 35 G. 3, c. 5. 1 V. 350, If any person shall knowingly detain, buy, or exchange, or otherwise receive any arms, clothes, caps, or other furniture belonging to the King, from any soldier, or deserter, or any other person, upon any account or pretence whatsoever; or any hats, shoes, shirts, or stockings, or other articles generally deemed regimental necessities, according to the custom of the army, provided for such soldier or deserter by his captain, or other officer commanding the company to which he belongs, and paid for by deductions out of his pay, without leave in writing from such captain or officer, or cause the colour of such clothes to be changed, the person so offending shall forfeit for every such offence, the sum of five pounds, and upon conviction by the oath of one or more credible witness or witnesses, before any two Justices of the Peace, the said penalty shall be levied by warrant under the hands of the said Justices, by distress and sale of the goods and chattels of the offender; one moiety of such penalty to be paid to the informer, and the residue to the officer to whom any such deserter or soldier did belong. And in case any such offender, so convicted, shall not have sufficient goods and chattels, whereon distress may be made, to the value of the penalty recovered against him for such offence, or shall not pay such penalty within four days after such conviction, then and in such case, such Justices may by warrant under their hands and seals, commit such offender to the common gaol, there to remain without bail or mainprize for three months, or cause such offender to be publicly whipped, at the discretion of such Justices. *Perpetual.*

By the 4 & 5 G. 4, c. 34. 3 V. 193, made in amendment of the foregoing Statute, it is enacted, "That it shall be lawful for the said Justices before whom any conviction shall be had against any offender under the said Act, to commit such offender to the common gaol, after conviction and before the expiration of the said four days, unless such offender shall enter into recognisances with two sureties, for his personal appearance before the said Justices, at the expiration of the said four days mentioned in the said Act. *Perpetual.*"

Directions.

For the proceedings to recover the penalty mentioned in

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the first of the foregoing Statutes, and also subsequent to the conviction of the offender, with the requisite Forms which may be made to serve, see respectively, Titles,—Information; Summons; Conviction; Distress; Commitment.

SPIRITUOUS LIQUORS.

SUCH of the enactments relating to the sale of Spirituous Liquors, as it is deemed requisite to set forth under this Title, may be conveniently arranged under the following Divisions:

- I. LICENSES FOR THE SALE OF SPIRITUOUS LIQUORS.
- II. SELLING THE SAME WITHOUT LICENSE, OR AFTER THE EXPIRATION THEREOF.
- III. HANGING OUT SIGNS.
- IV. SELLING IN HOUSE NOT NAMED IN LICENSE.
- V. ORDER IN LICENSED HOUSES AND SHOPS, AND WHEN, AND TO WHOM SPIRITUOUS LIQUORS ARE NOT TO BE SOLD.
- VI. SELLING GOODS IN TAVERNS.
- VII. REGULATIONS AS TO QUANTITIES IN WHICH SPIRITUOUS LIQUORS MAY BE SOLD.
- VIII. PROSECUTIONS FOR OFFENCES.
- IX. WITNESSES ON PROSECUTIONS.
- X. APPLICATION OF PENALTIES.
- XI. OBSTRUCTING CLERKS OF LICENSES.
- XII. RECOVERY OF LICENSE DUTIES.
- XIII. SUSPENDING LICENSES, FOR VIOLATION OF ENACTMENTS.
- XIV. SELLING SPIRITUOUS LIQUORS ON CREDIT, AND SECURITIES AND PLEDGES FOR THE SAME.
- I. LICENSES FOR THE SALE OF SPIRITUOUS LIQUORS.

By the Statute of the 2 W. 4, c. 3 4 V. 112, "The Justices in each county or district, in their first General Quarter Sessions in every year, may grant and order tavern licenses for the sale of wine, beer, ale, cider, or perry, rum, brandy, and other strong or distilled spirituous liquors, for use or consumption in the tavern or house of the party licensed, to be issued and given to and in favour of such and so many fit and proper persons, of good fame, and of sober life and conversation, as the said Justices shall judge necessary to be licensed, to sell such liquors in any quantity within, and to keep taverns

Granting Licenses.

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or houses of public entertainment in the several towns, and on the several roads and streets of the Province, lying within their respective counties or districts, and also to grant and order shop licenses, for the sale of such liquors, in a quantity not less than one quart, delivered at the same time, to such persons, keeping shops or vending goods, as the said Justices shall deem fit and proper.

Particulars to
be contained
in Licenses.

Sec. 5. In every such tavern license and shop license, granted pursuant to this Act, there shall be inserted and contained, the name, residence, and occupation of the person or persons to whom the same is made, and the particular house or shop for which the same license is given, with the name of the county, and of the town, township, or settlement thereof, and of the particular road, street, or lane therein, in which such house or shop is situate.

Granting Li-
censes in Spe-
cial Sessions.

Sec. 8. If after the first General or Quarter Sessions of the year, in any county or district, (except Halifax,) any person or persons shall apply for any such tavern license, or shop licence therein, it shall be lawful for the Justices at any other General Session held in and for such county or district, or for any three Justices thereof, in Special Session assembled, to make an order for granting such license, if it shall be deemed expedient so to do, and the same shall be issued accordingly. Provided always, that every such application made to a Special Session, for a tavern license, shall be first recommended by three Justices of the said county or district, not of the said Special Session; And provided also, that the issuing of such tavern license be first recommended by the Grand Jury.

Sec. 9. The said several Licenses shall be made and issued in the terms, and according to the Forms prescribed in the Schedule to this Act annexed, and shall be signed by the Clerk of the Licenses, the Clerk of the Peace first certifying thereon, that security has been given therefor as prescribed by the Act; and such license shall continue and endure from the date thereof until the end of the General or Quarter Sessions first held for the county or district, in the year next following the grant of such licenses respectively. *Perpetual.*

General Li-
censes.

By the 7 W. 4, c. 15, Sess. 1837, No general license whatever, shall be granted or issued to any person or persons residing in any part of this Province, except only to persons residing in the town or peninsula of Halifax.

Wine and
Beer License.

Sec. 3. No such license as heretofore called a Wine and Beer License, shall hereafter be issued or granted on any pretence whatsoever.

Licenses gra-
tis.

Sec. 4. It shall be lawful for the Justices of the Peace of the several counties or districts, upon the recommendation of

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the Grand Jury, but not otherwise, to grant a license *gratis*, or upon payment of such less duty or tax than is hereby imposed, as may seem to them proper, to any person or persons living on roads which are little frequented, for the encouragement of such persons keeping houses of entertainment on such public roads, for the accommodation of travellers.

Sec. 5. No Justice of the Peace shall hold a Tavern License for the retail of ardent spirits. *Annual.*

II. SELLING SPIRITUOUS LIQUORS WITHOUT LICENSE, OR AFTER THE EXPIRATION THEREOF.

By Sec. 15 of the aforesaid Act of the 2 W. 4, c. 3, "If any person or persons whatsoever, either by themselves, or their wives, or any of their children, or their known and reputed servants, or substitutes under them, directly or indirectly, in any house, shop, warehouse, or other place whatsoever belonging to the father or mother of such child or children, or to the known or reputed master or mistress of such servant or substitute, shall sell, barter, or exchange, or deliver upon credit, any rum; brandy, ale, wine, cider, perry, or other stronger distilled liquors, mixed or unmixed, by whatsoever name or names they are or may be called, (without license first had and obtained for that purpose, in manner and form as herein directed,) whether such wife, child, children, servant, or substitute, so sold, bartered, or exchanged, or delivered the same, or not, by the command of such father, mother, master or mistress, or shall hawk, sell, or expose to sale, barter, or exchange, or deliver upon credit, any such liquors, mixed or unmixed, by whatsoever name or names they are or may be called or distinguished, about the streets, wharves, highways, lanes, or suburbs of the town or peninsula of Halifax, or in any other town or place whatsoever within this Province, in any manner whatsoever, or upon the water, in any ship, boat, or vessel, or in any other manner whatsoever; or shall deliver upon credit, or sell, or barter, or exchange, or expose the same to sale, on any bulk or bulks, stall or stalls, or in any shed or sheds, or on, or in any other place or places, such person or persons, and the father or mother of such child or children, and the reputed master or mistress of such servants or substitutes, shall forfeit for every offence, a sum not exceeding twenty pounds, nor less than five pounds; and it shall be lawful for any two Justices of the Peace, on their view, or on confession of the party, or by proof on the oath of one credible witness, to convict any person or persons so offending, and the person or persons so convicted, shall immediately, on such and every other like

Selling without License.

conviction, pay the amount of such fines or forfeitures into the hands of the Clerk of the Licenses; and on such offender or offenders refusing or neglecting to pay the said sum, together with the charges of prosecution, it shall be lawful for such Justices to issue a warrant under their hands and seals, for the levying the same by distress and sale of the offender's goods and chattels; and if no sufficient distress can be found, then the said Justices shall, by warrant under their hands and seals, commit the offender or offenders to the gaol within the county where the offence shall be committed, there to remain in close confinement, or to be put to hard labour for the space of three months, or until he or she shall have fully paid and satisfied the said fine and charges as aforesaid, or otherwise, to be bound out by the Justices aforesaid, for any time not exceeding three months, to serve and labour for any person who will pay the fine and costs. Provided, that all prosecutions in pursuance of this Act, shall be made within three months after the offence committed.

Selling after
expiration of
License.

Sec. 28. Every person or persons licensed as aforesaid, who shall continue to sell any such liquors as aforesaid, for a longer time than the period or date for or to which their respective licenses are or shall be limited to endure and be in force, without taking out a new license, shall be subject to the like prosecutions, penalties, and forfeitures, as persons selling spirituous liquors without license.

[The Forms of Summons and of Conviction, in prosecutions, under the foregoing clauses, are contained in the Act recited under Division No. 8, and the other requisite Forms will be found at the end of the Title.]

III. HANGING OUT SIGNS.

By Sec. 16, of the same Statute, Every person keeping a tavern, or retail shop, and having license to sell any spirituous liquors, wine, ale, beer, cider, or perry, shall within ten days after obtaining such license, hang out a sign or inscription, with their names thereon, setting forth that spirituous liquors are there to be sold, on pain of forfeiting five pounds for every such neglect:

[NOTE. As no mode of recovering this penalty is mentioned in this Act, or in any other, it is clear that no prosecutions for the same can legally take place before Justices, but on complaint, the license of the offender may be suspended, pursuant to Sec. 37 of this Act.]

Sec. 17, If any person or persons, not having obtained

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a license therefor, shall presume to hang out, or suffer to remain, any sign or inscription whatsoever, importing that rum, or other strong or distilled spirituous liquors, wine, ale, beer, cider or perry, are there sold otherwise than by wholesale, upon proof thereof in manner and form herein described, such person shall be subject and liable to the like penalties and forfeitures as persons convicted of selling spirituous liquors without license.

[In prosecutions on this clause, the Forms will be similar to those in the case of selling spirituous liquors without license, and some of which will be found in the Act set forth under Division No. 8, and the others at the end of the Title.]

IV. SELLING IN ANY OTHER PLACE THAN THE ONE SPECIFIED IN THE LICENSE.

By Sec. 18, of the aforesaid Act of the 2 W. 4, c. 3, If any person or persons, either by themselves or their wives, or any of their children, or known or reputed servants or substitutes under them, directly or indirectly, shall presume to sell any rum, brandy, wine, ale, cider, perry, or other strong or distilled liquors, mixed or unmixed, by whatsoever name or names they are or may be called or distinguished, by virtue of or under pretence of any license obtained as in this Act is directed, in any other place than at the house, shop, or place to be named in such license, where such person or persons themselves shall *bona fide* actually and constantly reside and dwell, or carry on the business of such shop, upon conviction thereof, such person or persons shall be subject and liable to the like pains and penalties as persons convicted of selling spirituous liquors without license, and the same shall be prosecuted for, paid, levied and disposed of, in like manner as is directed by this Act.

[The requisite Forms, in prosecutions upon this clause, will be similar to those in the case of selling without license, and can readily be filled up so as to serve.]

V. ORDER IN LICENSED HOUSES, AND WHEN, AND TO WHOM SPIRITUOUS LIQUORS SHALL NOT BE SOLD, OR FURNISHED.

By the 2 G. 3, c. 1, § 3. 1 V. 78, No retailer or person whatsoever, shall harbour or suffer any apprentice, bound servant, or negro slave, to sit drinking in his or her house, nor sell or give him or them, nor suffer to be sold or given him or them, any wine, strong beer, ale, brandy, rum, or other spirituous liquors, without special order or allowance of their res-

Retailers harbouring, &c. Apprentices, or bound Servants.

pective masters or mistresses, on pain of forfeiting twenty shillings for every such offence, together with the charges of prosecution, to be recovered upon conviction on the oath of one credible witness, before any one Justice of the Peace within the town or precinct where the offence shall be committed, or such other proof as shall be to the satisfaction of such Justice; and to be levied by warrant of distress and sale of the offender's goods and chattels, under the hand and seal of the said Justice; and for want of sufficient distress, such Justice shall and may commit such offender to His Majesty's gaol, there to remain for one month, or till he shall have paid and satisfied the same. And such sum, so levied, shall by the said Justice be paid into the hands of the Overseer of the poor of the town or precinct where the offence shall be committed, to be by them applied to the use of the poor of such town or precinct. *Perpetual*

[The proceedings and Forms in prosecutions upon this clause, will be similar to those in prosecutions for selling spirituous liquors without license, the Forms in which case may readily be altered and filled up so as to serve.]

Forfeiture of
Master for
selling Spirits
to Servant.

By the 28 G. 3, c. 6, § 3. 1 V. 255, If any master or mistress shall sell rum or other spirituous liquors, to any servant hired by him or her, such master or mistress shall forfeit and pay for every such offence, on conviction before any Justice of the Peace, double the value of such rum or other spirituous liquors; and it shall not be lawful for any master or mistress to stop the wages or any part thereof, of any servant or labourer in his or her service or employment, for or on account of any rum or other spirituous liquors sold to such servant or labourer, while in his or her service or employment. *Perpetual*.

[In prosecutions on this clause, the proceedings and the Forms until after conviction, will be the same as in ordinary cases of the recovery of penalties before Justices, and which will be found under the respective Titles,—Information; Summons; Conviction. As no final process is mentioned for levying or enforcing payment of the penalty, no such process can legally be issued by the Justice.]

Keeping Or-
der in Licen-
sed Houses.

By Sec. 23, of the aforesaid Act of the 2 W. 4, c. 3, Every person licensed as aforesaid, shall at all times keep and maintain good order in the house, tavern, shop, or house of entertainment for which such licenses shall be granted, and shall not suffer any riot, disturbance, or breach of the peace therein; nor any raffle or raffles, nor the using or playing of any kind of game or games, by dice, cards, or otherwise therein, on pain of forfeiture of such license.

Sec. 24. No person whatsoever holding a shop license, shall open his, her, or their shop or warehouse, or either by

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himself or herself, or by his or her servant or servants, child or children, sell, expose, or offer for sale, any manner of goods or merchandise whatsoever, [bread and milk excepted,] on the Lord's Day, or on any part thereof, under the penalty of five pounds for every such offence, and of forfeiture of the license.

[As no jurisdiction or authority, is, by this clause or elsewhere, given to Justices, with regard to the recovery of this penalty, no prosecutions can, at present, legally take place before them, for that purpose.]

Sec. 25. If any tavern keeper, shop keeper, retailer of spirituous liquors, vintner, or other person keeping a public house of entertainment, or shop, and licensed as aforesaid, shall on any pretence whatsoever, suffer any disorderly persons, or any hired man or woman servant, apprentice, male or female, or any person under the age of twenty-one years, to resort to such tavern, shop, or public house, or at any time or times of the day or night, throughout the week, there to idle or mis-spend his, her, or their time, or to have any liquor to drink therein; or shall entertain or suffer on the Lord's Day, any of the inhabitants of Halifax, or of any of the towns respectively, where such tavern keepers, shop-keepers, retailers of spirituous liquors, vintners, or other persons keeping public houses of entertainment or shops, respectively dwell, or others not being strangers or lodgers in such houses, or such as come thither for necessary dieting or victualling only, to abide or remain in or about their dwelling houses or shops, drinking or idly spending their time, it shall and may be lawful for any one Justice of the Peace for the county, either on his own view, or on the information of one credible witness, to cause the person or persons offending against this clause, or any matter or thing herein contained, to be apprehended and committed prisoner to the county gaol, unless such offender or offenders shall enter into a recognisance before such Justice, with one or more sufficient bondsmen, for his, her, or their appearance at the next General Sessions of the Peace, there to answer to such complaint, and in the mean time to be of good behaviour; and also to bind over the witness or witnesses, to prosecute at such Sessions; and it shall be lawful for the Grand Jury, of their own knowledge, or on the information of one or more credible witnesses, to make presentment, or to prefer a bill of indictment against such offender, at the General or Quarter Sessions of the county or district where the offence shall have been committed; and such tavern keeper, shop keeper, retailer, vintner, or other person keeping such public house, or shop, being duly convicted by the verdict of a Jury, upon such presentment and

Retail Shops
not to be
opened on the
Lord's Day.

Prosecution
and Punish-
ment of Re-
tailers, &c.
for sundry of-
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indictment, shall forfeit his license, and shall also pay the penalty of his, her, or their bond or recognisance taken pursuant to this Act; and every such tavern keeper, shop keeper, retailer, vintner, or other person aforesaid, shall cause the whole of this, and the two preceding Sections of this Act, written or printed in a plain and legible manner, to be affixed and set up in some conspicuous part of his or her tavern or shop, and in every room in his or her house, set apart or commonly used for the entertainment of travellers or other persons, and there to remain as long as he or she shall hold such license; on pain of forfeiting such license for any neglect thereof.

[The requisite Forms of Information, Warrant, and Commitment, on this clause, will be found at the end of the Title. For the Act prohibiting the sale of Spirituous Liquors to Indians, see Title,—Indians.]

VI. SELLING GOODS IN TAVERNS.

By Sec. 26 of the said Act, of the 2 W. 4, c. 3, "It shall not be lawful for any tavern keeper, or person holding a Tavern License, unless such person also holds a general license, hereafter to sell, vend, or expose to sale, in or about his or her tavern, any goods, wares, or merchandize whatsoever, other than the victuals or drink necessary to be used and consumed, and which are usually used and consumed in taverns; nor shall he or she suffer the same to be done; and any person or persons offending against the provisions of this clause, shall forfeit and pay the penalty of twenty pounds for every offence; to be recovered and applied in the manner herein mentioned."

[Prosecutions on this clause must be before two Justices, and in every respect in the same manner as for selling spirituous liquors without license.]

VII. REGULATIONS AS TO QUANTITIES IN WHICH SPIRITUOUS LIQUORS MAY BE SOLD.

By Sec. 27 of the last mentioned Act, If any person holding any Shop License, shall sell or deliver any quantity of wine, ale, beer, cider, perry, rum, or other strong, distilled spirituous liquors, less than a quart, or shall on any account permit or suffer any wine, ale, beer, cider, perry, rum, or other strong liquors, to be sold for the purpose of being drunk or consumed in his or her shop or house, such person or persons so offending, unless holding a General License, shall be subject to the like prosecutions, penalties and forfeitures, as persons selling spirituous liquors without license; and every per-

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son taking out such Shop License, shall cause the whole of this and the preceding Section of this Act, written or printed in a plain legible manner to be affixed up in some conspicuous part of his or her shop, and there to remain during the continuance of his or her license, on pain of forfeiture thereof.

[NOTE. No general license can now be granted except in Halifax. The preceding clause referred to, is the one which prohibits the sale of goods and merchandise in taverns. The Forms, in prosecutions on the foregoing clause, will be similar to those in the case of selling spirituous liquors without license.]

Sec. 30. Provided that nothing in this Act contained shall extend to prevent or debar any merchant, shopkeeper, or other person, (not licensed by any such license as aforesaid, to retail any rum, or other strong or distilled spirituous liquors, wine, ale, beer, cider, or perry, in any part of this Province, other than the town or peninsula of Halifax,) from selling any quantity of such liquors, not less than ten gallons thereof, delivered at one and the same time, or not less than the contents of the original cask, package, or case in which the same was brought into this Province.

By the 7 W. 4, c. 15, Sess. 1837, It is Provided, that nothing in this Act, or any other Act contained, shall extend to prevent any person holding a tavern license, (except in the town of Halifax,) from selling any quantity of spirits, wine, or other liquor, not exceeding at any time one quart, to any person whomsoever, (excepting Indians,) whether the same is to be consumed in his house, or elsewhere. *Annual.*

What quantities may be sold without a License.

VIII. PROSECUTIONS FOR OFFENCES.

By the 7 W. 4, c. 48. Sess. 1837, In all cases or prosecutions under the Act passed in the second year of the reign of his present Majesty, entitled,—“An Act concerning Persons Licensed to keep Public Houses or Shops and the Duties thereon,” or under any other Act relating to licensed houses, or the license duties, or licenses, the summons to be issued against the person complained of, shall be in the form following, that is to say :—

To either of the Constables of the (Town or County) of ——. Form of Summons.
You are hereby commanded to summon A. B. of —, to be and appear before us, at —, on the — day of — next, to answer to the suit of C. D., clerk of license for the county of —, for a breach of the Act passed in the second year of the reign of his present Majesty, entitled “An Act concerning persons licensed to keep Public Houses or Shops and the Du-

ties thereon," in having, (here briefly state the nature and description of the offence, as the case may be,) contrary to the provisions of the said Act. Witness our hands and seals, at —, this — day of —, A. D., 18.

A. B., [Seal.] Justice of the Peace.

C. D., [Seal.] Justice of the Peace.

Trial of Offences.

Sec. 2. It shall be lawful for the Justice or Justices, before whom any person shall be summoned, to proceed on the summons aforesaid, to the trial of the offence complained of, as in case of an ordinary action or debt before such Justice or Justices, and thereupon to convict the offender or offenders, either by default or upon confession, or upon evidence to be adduced before such Justice or Justices; and such conviction shall be indorsed upon, or annexed to the original summons, in the form following, that is to say:—

Form of Conviction.

The within named defendant, having been duly summoned, was this day convicted of the offence within mentioned, *upon his own confession, or upon default, or upon the oath of A. B., a credible witness*, as the case may be, stating the manner of the party's conviction, and the names of the witnesses who may be examined.]

Witness our hands, this — day of —, A. D. 183—.

Which when signed by the said Justice or Justices, shall be, and be deemed a good, valid, and legal record of such conviction, to all intents and purposes.

Married Women and Servants.

Sec. 3. Any married woman, or servant, offending against the Act hereby amended, or any other Act in force respecting licenses, or license duties, for public houses or shops, shall be, and be deemed and held liable to any penalty for such offence, which shall be imposed by the Act, for a breach of which such married woman or servant shall be prosecuted; Provided, that no other or second prosecution shall, for the same offence, be entertained against the husband or master of such person offending as aforesaid. *Duration not limited.*

[The requisite Forms, after conviction, will be found at the end of the Title.]

IX. WITNESSES ON PROSECUTIONS.

By the aforesaid Act of the 2 W. 4, c. 3, § 31, When any information, presentment, or indictment, shall be made against any person or persons offending against this Act; and any person or persons shall be summoned to give evidence relative thereto, and any such person, so summoned, shall neglect or refuse to give his or her attendance at the time and

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place mentioned in the summons, not having any just cause therefor, to be allowed by the Justices before whom such information, presentment, or indictment shall be made; or shall wilfully withdraw himself or herself before sworn; or shall wilfully refuse to be sworn; or shall refuse to give his or her evidence; in every such case, the party so offending shall forfeit and pay the sum of ten pounds; to be levied by warrant of distress and sale from the said Justices, on the offender's goods and chattels; and for the want of such distress, such person or persons shall be committed to gaol, there to remain for three months, or until the said sum of ten pounds shall be paid; provided, nevertheless, that no person shall be obliged to give evidence on any information, before such person be paid or secured their reasonable charges for attendance, to be allowed of and ordered by such Justices, and payable out of the monies arising by virtue of this Act.

In the case of a witness neglecting to appear according to summons, or of his wilfully withdrawing himself before being sworn, the same proceedings must take place against him for the recovery of the penalty mentioned in this clause, before he can be convicted, as in other cases, that is, by complaint, and a summons to appear and answer. The Forms of the Summons and Conviction, in prosecutions upon this clause, will be the same which are contained in the before recited Act of the 7 W. 4, c. 48. In the two cases of the witness refusing to be sworn, or to give evidence, it would seem that he may at once, on the spot, be convicted by the Justices, and in such case the summons will of course be unnecessary. The requisite Forms, after conviction, will be found at the end of the Title.

Directions.

X. APPLICATION OF PENALTIES.

By Sec. 32 of the aforesaid Act of the 2 W. 4, c. 3, All the monies arising from the conviction of any person or persons for the breach of any part of this Act, shall, after deducting the charges of prosecution, be paid by the Justices before whom the same shall be recovered, one half to the person or persons who shall inform and sue for the same, and the remaining half part to the Clerk of the Licenses, to be by him accounted for and applied as herein after directed.

XI. OBSTRUCTING CLERKS OF LICENSES.

By Sec. 34 of the same Statute,—In case any person or persons keeping taverns, retail shops, or public rooms, or any persons being in or about such taverns, shop, or room, at the

time the Clerk of License may be visiting the same, shall interrupt or assault the said Clerk, while in the execution of this Act, the said person or persons shall be liable to be indicted, and if convicted, fined or imprisoned for any such offence.

XII. RECOVERY OF LICENSE DUTIES.

By Sec. 36 of the same Statute,—So often as one half yearly payment for a tavern or shop license, shall be due and unpaid to the Clerk of the License, ten days after the same shall be due, it shall be lawful for such Clerk of the License, to bring an action on such person's bond, against himself, or his or her surety or sureties, before any one Justice of the Peace, or in any Court of Record, for the amount of such license duty, and such Justice shall give judgment for the same, and grant execution for such duty in arrear and costs against such debtor, and his or her surety or sureties.

[The proceedings and the Forms in the actions here mentioned, before a Justice, will be the same as in suits for the recovery of private debts before Justices, and will be found under the Title,—Summary Trials.]

XIII. SUSPENDING LICENSES, FOR VIOLATION OF ENACTMENTS.

By Sec. 37, of the same Statute,—If any complaint shall be made on oath, to any two Justices of the Peace for any county or district, that any person licensed to sell spirituous liquors by retail, keeps a disorderly house, or shop, or hath in any other respect neglected or refused to conform to the rules and regulations of this Act, or any other Act relating to licensed persons, it shall be lawful for such Justices, if the complaint shall appear to them to be well founded, to suspend the license of such person so complained against; and to direct notice of such suspension to be given to him, by the Clerk of the Licenses; and if, after such notice, the person whose license has been so suspended, shall presume to sell or retail any wine, ale, cider, or perry, or any rum, or other strong or distilled spirituous liquors, until such suspension shall be removed, such person shall suffer and pay the penalties and forfeitures imposed hereby on persons convicted of selling spirituous liquors without license; provided always, that the person or persons whose license has been so suspended, may appeal from the order of the said Justices, to the next General Sessions for the county or district; and the complaint being re-

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moved into the said Sessions, the Clerk of the Peace shall prepare and file an information accordingly, to which the appellant shall plead without delay, and the cause shall be tried by a Jury; and if the appellant is acquitted, such suspension shall forthwith be removed; but if he be convicted, his license shall be wholly taken away, and his license bond shall be put in suit against him and his sureties.

[Upon a complaint on this clause being made to the Justices, the party charged must be summoned to appear and answer, and the matter be heard and determined before the Justices, in the usual manner. The Summons must be in the Form given in the before recited Act of the 7 W. 4, c. 48.]

XIV. SELLING SPIRITUOUS LIQUORS ON CREDIT, AND SECURITIES AND PLEDGES FOR PAYMENT OF THE SAME.

By the 2 G. 3, c. 1. 1 V. 77, No retailer, inn holder, tavern, or alehouse keeper, who shall sell upon trust or credit, any wine, strong beer, ale, brandy, rum, or other spirituous liquors, mixt, or unmixt, to any soldier, sailor, servant, or day labourer, or other person whatsoever, to the amount of any sum exceeding the sum of five shillings, shall have any remedy to recover the same, either at law or in equity, against any of the persons aforesaid, their executors or administrators.

Sec. 2. In case any soldier, sailor, servant, apprentice, bound servant, or negro slave, or other person whatsoever, shall leave any pawn or pledge as a security for the payment of any sum exceeding five shillings, contracted in such manner, he or she, or the masters or mistresses of such servant, apprentice, bound servant, or negro slave, may complain to any Justice of the Peace where such retailer, inn holder, tavern, or ale house keeper, or any other persons whatsoever, receiving such pawns or pledges, usually resides, that such pawn or pledge is detained from him or her by such retailer, inn holder, tavern, or ale house keeper, or any other person whatsoever, and having made proof thereof upon oath, or otherwise, to the satisfaction of said Justice, such Justice is required by warrant under his hand and seal, to compel such retailer, inn holder, tavern, or ale house keeper, or other person, by distress and sale of his goods, to restore the aforesaid pawn or pledge to the party complaining, or to make him or her satisfaction for the loss or abuse thereof; and shall further be subject to a fine not exceeding twenty shillings, for the use of the poor, and costs of prosecution.

Sec. 4. Provided always, that nothing herein contained shall extend to debar any retailer, inn holder, tavern, or ale

house keeper, from furnishing any traveller, or boarders in his family, with necessary refreshments on credit. *Perpetual.*

[On a complaint being made of this offence, the party charged must be summoned to appear and answer, and the matter must be heard and determined by the Justice, as in other cases; and if the charge is proved, the Justice should at the same time impose the fine. The Form of such a Complaint, and also of a Summons, may readily be framed from the general Forms under the respective Titles,—Information, and Summons. As it is not specified to what extent, or for what value or amount, the distress is to be made, there seems to be much difficulty as to filling up and levying a warrant for the purpose.]

Notes, &c. by
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By the 28 G. 3, c. 6. 1 V. 255, All notes, bills, specialties, or agreements whatever, which shall hereafter be given to any person or persons whatsoever, by any servant, or common labourer, if it shall appear that any part of the sum due or secured by such bond, note, bill, specialty, or agreement, was given for or on account of any rum, or other spirituous liquors, the same, and every part thereof, shall be void, and of none effect; and all accounts or contracts, on which suits shall or may be brought against any servant, or common labourer, in which shall appear any charge made, directly or indirectly, for rum, or other spirituous liquors, the whole of such account or contract shall be null and void, and the party suing the same shall become nonsuit.

Wearing Ap-
parel, Tools,
&c. not to be
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en in pawn
from Servants
or Labourers.

Sec. 5. If any tavern keeper shall, by himself or any other person, buy or receive in pawn, any wearing apparel, tools, or implements of trade or husbandry, or any household goods or furniture, made up, from any servant or common labourer, such tavern keeper, or retailer, shall forfeit and pay for every such offence, a sum not exceeding forty shillings, and the bargain, sale, or pawning shall be *ipso facto* void; and the articles, so purchased or received, be immediately restored, or double the value thereof, on pain of imprisonment not exceeding one month, at the discretion of the Justice or Justices before whom complaint shall be made; and all persons keeping a tavern, or retailing spirituous liquors, after the publication hereof, are always to keep a fair, legible copy of this Act, pasted or hung up in some public and conspicuous part of their house, under the penalty of ten shillings for every day's neglect thereof, to be recovered before any Justice or Justices of the Peace, on the complaint of any person or persons whatsoever. *Perpetual.*

Directions.

For the recovery of the fine of forty shillings, first mentioned in the foregoing clause, the same proceedings must be

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had as in similar cases, by information and complaint, and by summoning the party charged, to appear and answer. The complaint and prosecution may, according to the terms of the clause, be either before one Justice or more. The requisite Forms of Information; Summons; Conviction; and Commitment, may be framed from the general Forms contained under those Titles respectively, filling them up according to the facts stated or proved. The penalty of ten shillings last mentioned, must also be sued for and recovered in like manner, and under the like Forms. It must be observed, however, that as no final process is mentioned for levying or enforcing payment of this penalty, no such final process can be issued by Justices.

As the before recited Statute of the 7 W. 4, c. 48, has given brief Forms of the summons, and conviction, in prosecutions upon any of the Acts relating to licenses, or licensed houses, it is thought that it may safely be inferred, that on a complaint for selling spirituous liquors without license, or indeed for any other offence under the License Acts, where only a summons is required, a formal information in writing, such as has in general been heretofore used, is not indispensably requisite, especially as any such information has never been required by any legal provision, and also, as a formal record of conviction, is now, in all cases under the said Acts, dispensed with by the aforesaid Statute, which declares, that the brief Form therein given, shall serve "to all intents and purposes whatsoever." It is considered, therefore, that in every such case where only a summons is requisite, a verbal complaint and statement to the Justices, by the Clerk of the Licenses, or other person informing, will suffice; and on his requisition, the Summons may be issued immediately. In the event, however, that it should at any time be determined, that such formal information is requisite, the following is a Form thereof for selling without License, which has been generally used, and which may readily be altered and filled up, so as to serve in any other case under the License Acts.

Information for selling Spirituous Liquors without a License.

County of) BE it Remembered, that on the — day of
{ —, in the year of our Lord one thousand eight
hundred and —, at — in the said county, A. C. of —
in the said county, Clerk of the Licenses for the said county,
who prosecutes as well on the behalf of our Lord the King,
to the use of the said county, for the purposes by law provided,
as for himself in this behalf, in his proper person cometh be-

fore us, A. M. and A. R., Esquires, two of His Majesty's Justices of the Peace for the said county, and as well on behalf of our said Lord the King, to the use of the said county as aforesaid, as for himself in this behalf, pursuant to the Statute in such case provided, giveth us the said Justices to understand and be informed, that within three months next before the said day above mentioned, to wit, on the — day of —, in the year one thousand eight hundred and —, at — in the said county, one A. O., of — in the said county, yeoman, did sell rum, [or wine, brandy, or gin, &c., as the case may be,] by retail, in a quantity less than —, in the house of him the said A. O., situate and being at — in the township of —, in the said county, without being licensed thereto according to law, whereby, and by force of the Statute in such case made and provided, the said A. O. hath forfeited for his said offence, a sum not exceeding twenty pounds, nor less than five pounds, and also the charges of the prosecution of him the said A. O. for the said offence; the said penalty to be distributed and applied as by law provided; and that A. W. and B. W. of — in the said county, yeomen, are material witnesses to be examined concerning the premises. And the said A. C. hereupon prayeth, that the said A. O. may be convicted of the said offence, and that the penalty which the said A. O. may be adjudged to pay as aforesaid, may be distributed and paid as the law directs, and that the said A. O. may be summoned to answer the premises, before us the said Justices, and that the said A. W. and B. W. may be summoned to testify before us, their knowledge therein.

A. C.

The Form of the Summons to be issued in any such case, is contained in the before recited Act of the 7 W. 4, c. 48.

Directions.

The manner of proceeding, on the hearing of the complaint before the Justices, will be the same in general as on the trial of other penal prosecutions, and information and directions on the subject will be found under the Titles,—Information, and Conviction. The prosecutor must always, if possible, have the Clerk of the Peace present as a witness on the trial, to prove that the defendant is not licensed, as this proof has, by some of our Judges, been held to be requisite. The prosecutor himself cannot be a witness, as he is entitled, on a conviction, to a part of the penalty. The costs of the prosecution must be taxed and allowed by the Justices. Where a conviction takes place, it may be indorsed on the summons, in the form set forth in the said last mentioned Act. The fol-

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lowing will serve as the form of a Warrant of Distress, for levying the penalty imposed.

Warrant of Distress.

County of } To A. T. one of the constables of the town-
ship of —, in the said county.

[Seal.]

[Seal.]

WHEREAS, on the — day of —, in the year of our Lord one thousand eight hundred and —, A. O. of — in the said county, yeoman, was duly convicted before us A. M. and A. R. Esquires, two of His Majesty's Justices of the Peace, in and for the said county of —, on his own confession, [or on the oath of — as the case may be] of having sold rum, [or wine, &c. as the case shall happen to be,] by retail, at — in the township of —, in the said county, on the — day of — in the year one thousand eight hundred and —, without being licensed thereto, according to law; And whereas the said A. O., on his said conviction, was by us the said Justices, for his said offence, adjudged to pay the sum of — pounds, pursuant to the Statute in such case provided, besides the costs of his prosecution before us for the said offence, which charges we have ascertained and assessed at the sum of —, pursuant to the Statute in such case provided; and whereas the said A. O. hath not yet paid the said sums, or any part thereof; these are therefore to command you, to distrain the goods and chattels of the said A. O., wheresoever they may be found within our jurisdiction, and on the goods and chattels so distrained, to levy the said several sums of — pounds and —, and if within the space of five days next, after such distress by you made, the said several sums, together with the reasonable charges of taking and keeping the said distress, to be allowed by us the said Justices, shall not be paid, that then you do sell the said goods and chattels, and out of the money arising by such sale, that you do pay one moiety of the said sum of — pounds, and also the said sum of —, being the charges aforesaid, to A. C. of — in the said county, Clerk of the Licenses for the said county, who informed us of, and prosecuted for, the said offence, and that you also pay the other moiety of the said sum of — pounds, into the hands of him the said A. C., to be by him accounted for, and paid over for the use of the said county, pursuant to the Statute in such case provided, returning to him, the said A. O., the overplus on demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted; and you are hereby commanded to certify to us the

A. C.

SPIRITUOUS LIQUORS.

said Justices, what you shall have done, by virtue of this our warrant. Given under our hands and seals, at — in the said county, the — day of —, in the year of our Lord —.

A. M., J. P.

A. R., J. P.

Return to be indorsed upon the Warrant, when no Goods can be found.

I do hereby certify to A. M., and A. R., the Justices within named, that the within named A. O., hath not any goods or chattels belonging to him the said A. O., within the jurisdiction of the said Justices, whereof I can levy the within mentioned sums of — pounds, and —, or any part thereof respectively, as within I am commanded. Dated this — day of —, in the year of our Lord —.

A. T., one of the Constables
of — within named.

Commitment thereupon, for non-payment of the Penalty.

County of } To A. T., one of the Constables of the
} township of — in the said county, and to the
[Seal.] Keeper of His Majesty's Gaol at —, in the said
[Seal.] county.

WHEREAS, on the — day of —, in the year of our Lord one thousand eight hundred and —, A. O., of —, in the said county of —, yeoman, was duly convicted before us A. M. and A. R., Esquires, two of His Majesty's Justices of the Peace in and for the said county of —, on his own confession, [or on the oath of —, as the case may be,] of having sold rum, [or wine, &c. as the case shall happen to be,] by retail, at — in the township of —, in the said county, on the — day of —, in the year of our Lord one thousand eight hundred and —, without being licensed thereto according to law; And Whereas he the said A. O., on his said conviction, was by us the said Justices for his said offence, adjudged to pay the sum of — pounds, pursuant to the Statute in such case provided, besides the charges of his prosecution before us for the said offence, which charges we have ascertained and assessed at the sum of —, pursuant to the Statute in such case provided; And Whereas the said A. O. hath hitherto neglected and refused to pay, and hath not yet paid the said sums, or any part thereof; And whereas, on the — day of —, last past, we did issue our warrant to A. B., one of the constables of the said township of —, command-

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ing him to distrain the goods and chattels of the said A. O., wheresoever they might be found within our jurisdiction, and that the said constable should certify to us the said Justices what he should do by virtue of our said warrant ; And whereas it duly appears to us by the return of the said A. B., dated the — day of — last past, that the said A. O. hath not any goods or chattels belonging to him the said A. O., within our jurisdiction, whereof he could levy the said sums, or any part thereof ; these are therefore to command you the said constable, to whom this warrant is directed, to apprehend him the said A. O., and him safely to convey to the said gaol at —, aforesaid, and there to deliver him to the said keeper thereof, together with this precept. And we do hereby command you the said keeper of the said gaol, to receive into your custody in the said gaol, him the said A. O., and him there safely to keep in close confinement, or to be there put to hard labour, for the space of three months, or until he the said A. O. shall have sooner paid and satisfied the several sums aforesaid ; and for so doing, this shall be your sufficient warrant. Given under our hands and seals, at —, in the said county, the — day of —, in the year of our Lord —.

A. M., J. P.

A. R., J. P.

Summons for a Witness, on an Information for selling Spirituous Liquors without License.

County of } To A. T., one of the constables of the township of — in the said county.

[Seal.]

[Seal.] WHEREAS information hath been made before us A. M. and A. R., Esquires, two of His Majesty's Justices of the Peace for the said county of —, by A. C. Clerk of the Licenses for the said county, that A. O. of — in the said county, yeoman, did within three months previous to the said information, at — in the said county, sell rum by retail, without being licensed thereto according to law ; and the said A. O. hath been summoned to appear before us, to answer to the said information, on — the — day of — in this present year, at — o'clock in the forenoon, at — in the said county ; And whereas we have been informed that A. F. and A. W. of — in the said county, yeomen, are material witnesses to be examined and give evidence relative to the said information ; These are therefore to require you to summon the said A. F. and A. W., to appear before us the said Justices, on —, the said — day of — in this present year, at the hour aforesaid,

SPIRITUOUS LIQUORS.

at — aforesaid, to testify their knowledge concerning the premises. Herein fail you not. Given under our hands and seals at —, the — day of —, in the year —.

A. M., J. P.

A. R., J. P.

Directions.

The foregoing Summons may readily be altered, so as to serve in any prosecution upon any of the Statutes concerning spirituous liquors, set forth under this Title.

If the witness fail to appear according to the summons, after the same has been duly served on him, upon application being made to the Justices, it will be their duty to issue a summons against such witness, according to the Form set forth in the aforesaid Act of the 7 W. 4, recited under Division No. 8, of this Title. It does not seem to be requisite to take any formal information, or complaint in writing, before issuing such summons, for the same reasons as have been given with regard to a complaint for selling spirituous liquors without license. In this prosecution against the witness, the summons must be served on him in the usual manner, and the same proceedings must take place as in the course, and on the trial, of any other prosecution before Justices. If the witness fail to shew any reasonable and sufficient ground for his non-attendance in the original suit, and he is thereupon convicted of such offence, the conviction shall be indorsed on the summons, in the form, and according to the directions contained in the said Act before recited, and a warrant of distress in the following Form shall be thereupon issued.

Warrant of Distress, to levy the Penalty for non-attendance as a Witness.

County of } To A. B., one of the Constables of the
} township of — in the said county.

[Seal.]

[Seal.] WHEREAS, on the — day of —, in the year of our Lord one thousand eight hundred and —, A. O., of — in the said county, yeoman, was duly convicted before us, A. M. and A. R., Esquires, two of His Majesty's Justices of the Peace in and for the said county of —, for that he the said A. W. was duly summoned to appear before us the said Justices, at — in the said county, on the — day of —, in the year aforesaid, to give evidence as a witness, on the trial of a certain prosecution then depending, and then and there to be tried, on the information and complaint of A. C., Clerk of the Licenses for the said county, against one A. O., of — in the said county, yeoman, for selling spirituous li-

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quors by retail, without being licensed so to do, and for that he, the said A. W., having been duly summoned as aforesaid, wilfully, and without any just cause, neglected and refused to appear before us, on the day last aforesaid, as such witness on the said trial, and to give evidence thereon as aforesaid, contrary to the Statute in such case provided; and whereas the said A. W., on his said conviction, was by us the said Justices, for his said offence, adjudged to pay the sum of ten pounds, pursuant to the Statute in such case provided; These are therefore to command you, to distrain the goods and chattels of the said A. W., wheresoever they may be found within our jurisdiction, and on the goods and chattels so distrained, to levy the said sum of ten pounds, and if within the space of six days next, after such distress by you made, the said sum, together with the reasonable charges of keeping the said distress, to be allowed by us the said Justices, shall not be paid, that then you do sell the said goods and chattels, and out of the money arising by such sale, that you do pay the said sum of ten pounds, into the hands of us the said Justices, to be by us paid over and applied, as by law directed, rendering the overplus to him the said A. W., on demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And certify to us what you shall have done by virtue of this warrant. Given under our hands and seals, at —, the — day of —, in the year of our Lord one thousand eight hundred and —.

A. M., J. P.

A. R., J. P.

If no goods can be found whereon to levy, the constable must make a return thereof on the Warrant, according to the form of such return already given under this Title, in the case of the warrant of distress for selling liquors without license.

Commitment for want of distress from which to levy the Penalty for non attendance as a Witness.

County of } To A. B. one of the constables of the township of —, in the said county, and to the Keeper of the common gaol at —, in the said county.
[Seal.]
[Seal.] WHEREAS on the — day of —, in the year of our Lord one thousand eight hundred and —, A. O. of — in the said county, yeoman, was duly convicted, [Here recite precisely as in the foregoing warrant of distress down to the word "These" &c., and then proceed as follows,] And whereas on the — day of — last past, we did issue our war-

rant to A. B., one of the constables of the township of — aforesaid, commanding him to distrain the goods and chattels of the said A. W., wheresoever they should or might be found within our jurisdiction, and that the said constable should certify to us the said Justices, what he should do by virtue of our said warrant; And whereas it duly appears to us, by the return of the said A. B., the said constable, that the said A. W. hath not any goods or chattels belonging to him the said A. W. within our jurisdiction, whereof he, the said constable, could levy the said sum of ten pounds or any part thereof; These are therefore to command you the said constable, to whom this warrant is directed, to apprehend the said A. W., and him safely to convey to the said gaol, at — aforesaid, and there to deliver him to the keeper thereof, together with this precept. And we do hereby command you the said keeper of the said gaol, to receive into your custody in the said gaol, the body of him the said A. W., and him there safely to keep for the space of three months, or until the said sum of ten pounds shall be sooner paid and satisfied, and for so doing this shall be your sufficient warrant. Given under our hands and seals, at — in the said county, the — day of —, in the year of our Lord —.

A. M., J. P.
A. R., J. P.

Directions.

If the witness appears on the trial, according to the summons, but refuses to be sworn, or to give evidence, the information and summons against him are of course unnecessary, and the Justices may at once, on the spot, convict him for such refusal, and adjudge him to pay the ten pounds penalty, and may immediately, if required, issue the warrant of distress, and proceed to commitment, by the same course as already prescribed. The warrant of distress, and the commitment in such case, may readily be framed from the foregoing Forms, making the partial alterations obviously requisite.

Complaint against a Tavern keeper, for suffering certain persons to remain in or about his house, drinking, or idly spending their time; on the 2 W. 4, c. 3, Sec. 25.

County of } THE information and complaint of A. C. of
the — day of —, in the said county, yeoman, made on oath
hundred and —, before me A. M., Esquire, one of His
Majesty's Justices of the Peace in and for the said county.

The said A. C., saith, that A. O., of —, in the said

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county, tavern keeper, on the — day of —, in the year aforesaid, being the Lord's day, commonly called Sunday, did entertain and suffer one A. I., labourer, and divers other persons, all being inhabitants of the said town of —, to remain drinking, [or idly spending their time, as the case may be,] in and about the tavern and dwelling house of him the said A. O., at the town of — aforesaid—[or, if they are not inhabitants, say,—did entertain and suffer one A. D., of — in the county of —, yeoman, and divers other persons, to remain drinking, [or as the case may be,] in and about the tavern and dwelling house of him the said A. O., at — aforesaid, the said A. D., and the said other persons, not being strangers or lodgers in the said house of the said A. O., and not having then gone thither for necessary dieting and victualling only.]

A. C.

Before me,

A. M., J. P.

Warrant thereupon.

County of } To A. B., one of the Constables of the
 } township of — in the said county.

[Seal.]

WHEREAS information and complaint on oath, hath been made before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, by A. C., of — in the said county, yeoman, that A. O. of — in the said county, tavern keeper, on the — day of —, in the year of our Lord one thousand eight hundred and —, being the Lord's day, commonly called Sunday, did entertain and suffer one A. I., labourer, and divers other persons, all being inhabitants of the said town of —, to remain drinking, [or idly spending their time, as the case may be,] in and about the tavern and dwelling house of him the said A. O., at the town of — aforesaid, [or if they are not inhabitants, say, as before in the information,—did entertain and suffer one A. D., of — in the county of —, yeoman, &c.] contrary to the Statute in such case made and provided; These are therefore, in His Majesty's name, to require and command you, forthwith to apprehend the said A. O., and to bring him before me, to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, at —, the — day of —, in the year above written.

A. M., J. P.

Directions.

When the party is brought before the Justice on the warrant, if he produces a surety or sureties, to the satisfaction of the Justice, they must, pursuant to the terms of the Act, be bound in a recognisance, in such respective sums as the Justice in his discretion shall think reasonable; conditioned for the appearance of the party at the next term of the General Sessions in the county, there to answer to the complaint, and in the mean time to be of good behaviour; and the Justice must also, in the usual manner, bind over the witness or witnesses, to prosecute and give evidence at the same Sessions. The manner of taking such recognisances, and the Forms thereof, will be as in similar cases, and will be found under the Title,—*Recognisance*. If the party neglects or refuses to find such surety or sureties, and to be bound as required, the Justice must, as directed by the Act, commit him to gaol; the commitment for which purpose, may be after the following Form:

Commitment.

County of } To A. B., one of the Constables of the
 } township of — in the said county, and also to
 [Seal.] the keeper of His Majesty's gaol for the said
 county.

WHEREAS information and complaint hath been made before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, by A. C., of — in the said county, yeoman, that A. O. of — in the said county, tavern keeper, on the — day of —, in the year of our Lord one thousand eight hundred and —, being the Lord's day, commonly called Sunday, did entertain and suffer one A. I., labourer, and divers other persons, all being inhabitants of the said town of —, to remain drinking, [or idly spending their time as the case may be,] in and about the tavern and dwelling house of him the said A. O., at the town of — aforesaid, [or, if they are not inhabitants, say as before in the complaint.] And whereas the said A. O. was this day brought before me on my warrant, to answer unto the said complaint, and on his being so before me, I did require him the said A. O., to find one sufficient surety, and to enter with such surety into a recognisance before me, for the appearance of the said A. O. at the next General Sessions of the Peace in the said county, there to answer to such complaint, and in the mean time to be of good behaviour; and insomuch as the said A. O. hath refused to find any such surety, and to enter into such recognizance as aforesaid, I do therefore hereby require and command

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you the said constable, forthwith to convey the said A. O. to the common gaol of the said county, and to deliver him to the keeper thereof, together with this warrant : And I do also require and command you the said keeper, to receive the said A. O. into your custody in the said gaol, and him there safely to keep, until he shall find such surety, and enter into such recognisance as aforesaid, or until he shall be thence delivered by due course of law. Herein fail not. Given under my hand and seal, at —, the — day of —, in the year above written.

A. M., J. P.

If the offence takes place on the view of the Justice, the information is of course needless, and the warrant may be immediately issued, and on the party being brought before the Justice, the same proceedings must take place as before directed. The warrant in such case may be in the following Form :

Warrant.

County of) To A. B., one of the Constables of the
) township of — in the said county.

[Seal.]

WHEREAS A. O., of the town of —, in the said county of —, tavern keeper, on the — day of —, in the year of our Lord one thousand eight hundred and —, being the Lord's day, commonly called Sunday, did in the view of me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, entertain and suffer one A. I., labourer, and divers other persons, &c. [here proceed exactly in the same words as in the warrant last given, quite to the conclusion.]

The commitment in this case, of the offence being on view, may be readily filled up from the aforesaid warrant, and the preceding Form of Commitment.

If the complaint is,—for suffering disorderly persons, or hired servants, apprentices, or persons under the age of twenty-one years, to resort to a tavern, or shop, at any time throughout the week, to idle or misspend time, or to drink liquor therein, the information, warrant, and other papers, must be filled up accordingly, which may readily be done, with the assistance of the foregoing Forms. The other proceedings, in every such case, will be the same as before directed.

STABBING, *see* HOMICIDE.STEALING, *see* LARCENY.

SUMMARY TRIALS.

THIS Title includes an extensive and most important branch of the jurisdiction and duties of a Justice of the Peace, arising under a general Statute of this Province, which gives them that jurisdiction with regard to the recovery of private debts of a limited and small amount. The Statute referred to, is of a temporary description ; but the jurisdiction on this subject was extended to Justices in the earliest period of our legislation, and has nearly ever since been prolonged, by various Statutes from time to time passed ; and it is most probable will still be continued. The divisions under which the subject is here arranged, and the manner in which it is treated of, will, it is hoped, be found the most useful and convenient to Magistrates. Such an extended and comprehensive consideration of the subject, seems indeed to be almost indispensable, in any attempt to afford them the requisite information on a part of their duty so important in itself, and which they are so frequently required to perform. It must be borne in mind, that in exercising this summary jurisdiction, Justices are not empowered to determine according to what *they* may deem to be equitable, but are to decide agreeably to the same rules of law which govern in the highest Courts ; and it is quite possible that as great a variety of such rules may apply, and as many legal doubts and difficulties may arise, in an action for the recovery of three pounds, as in one for the largest amount. In the next place, it can be no reflection upon the gentlemen in the Commission of the Peace to say, that but very few of them are even generally versed in the various branches of the law. It could not reasonably be expected to be otherwise. These things being considered, it is highly requisite that suitable information and directions should be afforded them, regarding this widely extended branch of their jurisdiction, so that their decisions may at least be consistent with the general rules and principles of our laws. An endeavour to that effect is here made, and it is trusted that it will be found to be accomplished in some useful degree.

- I. THE SEVERAL STATUTES RELATING TO THE RECOVERY OF DEBTS BEFORE JUSTICES OF THE PEACE.
- II. OF THE PERSONS WHO MAY, AND THOSE WHO MAY NOT SUE OR BE SUED IN SUCH CASES ; AND HEREIN, OF THE JOINDER OF PARTIES.
- III. OF THE TIME LIMITED BY LAW FOR THE RECOVERY OF DEBTS, AND ESTABLISHING MATTERS OF DEFENCE.
- IV. THE ORDER AND MANNER OF PROCEEDING IN INSTITUTING AND CONDUCTING SUCH ACTIONS.
- V. THE GROUNDS OR CAUSES OF ACTION IN GENERAL, WITH THE GENERAL RULES OF LAW AND EVIDENCE RELATING TO THE SAME, RESPECTIVELY, AND HEREIN, OF THE STATUTE OF FRAUDS.
- VI. OF THE DEFENDANT'S SET-OFF.
- VII. OF JUDGMENTS, AND THE PROCEEDINGS ATTENDING AND FOLLOWING THE SAME, AND HEREIN,—OF APPEALS.

I. THE SEVERAL STATUTES RELATING TO THE RECOVERY OF DEBTS BEFORE JUSTICES OF THE PEACE.

By the 30 G. 3, c. 8. 1 V. 281, All summonses issued by Justices of the Peace, shall be directed to either of the constables of the county where the Justice issuing the same shall reside, and the party or parties against whom such summonses shall issue, shall have three days' notice to appear to such summons, exclusive of the day of service and the day of appearance ; and where the constable shall not be able to make a personal service, a copy of such summons shall be left by the constable at the defendant or defendant's house, or last place of abode, with some person residing there ; of which service the constable shall, if thereto required, make oath. [NOTE. It would seem that this last part of the clause, relating to the service, is altered by the Statute hereafter mentioned, of the 3 G. 4, c. 30, by which, a personal service on the defendant appears to be requisite.]

Direction and Service [of Summons.

Sec. 3. No Justice of the Peace shall entertain or have any jurisdiction of any of the following Actions, to-wit,—of debts for Rent,—Trove or Conversion,—or Actions on the case for words,—or Actions for Trespass, Assault and Battery, or False Imprisonment, or where the Titles of land shall in any ways come in question.

Justices not to have jurisdiction over certain causes of action.

[NOTE. Although there are no words in this Statute li-

miting its duration, and therefore in its *form* it may be considered as *Perpetual*, yet it seems quite doubtful if any part of it is now in force, as one of the two Acts of which it is intituled to be in amendment, was soon after expressly repealed, and the other, which was only a temporary Act, has long since expired, and various other enactments on the same subject have been from time to time passed.]

Debts not exceeding £3. to be recovered before one Justice, and not exceeding £5. before two Justices.

By the general Statute of the 3 G. 4, c. 30. 3 V. 134, it is enacted, that,—It shall and may be lawful for any person or persons, who have debts owing to him or them by any other person or persons, where the whole dealing or cause of action shall not exceed five pounds, to sue for the same in the manner following, that is to say,—if the sum demanded shall not exceed three pounds, to cause such debtor to be summoned to appear before any one Justice of the Peace of the county or district where the debtor shall reside; and if the sum demanded shall be more than three pounds, but does not exceed five pounds, to cause such debtor to be summoned to appear before any two Justices of the Peace, of the county or district where the debtor shall dwell: and the said Justice or Justices, after such summons issued and duly served, is, and are hereby empowered to proceed to make up final judgment between the parties; and shall allow the defendant to produce his account against the plaintiff, or any receipt or other discharges, for payment made, either in whole or in part; and the said Justice or Justices shall examine and enquire into the merits of both accounts, and of such discharges, and by such other proof as to him or them shall seem requisite, or upon confession of the debtor, to ascertain the debt due, and to decree the payment thereof; and to award costs as he shall find, whether for the plaintiff or defendant, without appeal, unless the debt, or cause of action, shall amount to twenty shillings or upwards, any law, usage, or custom to the contrary notwithstanding.

Execution.

Sec. 2. If any debtor, after being duly summoned to appear, shall, without just cause to be allowed of by the said Justice or Justices, refuse or neglect to perform such decree or judgment as shall be made, concerning such debt as aforesaid, it shall and may be lawful for such Justice or Justices, to issue execution against the goods, chattels, or body of such debtor, for the sum awarded, with costs: which execution shall be returnable in twenty days from the day on which it shall be issued. Provided always, that no person shall be arrested in any case, for a debt due by him under twenty shillings, nor for any larger debt, not exceeding three pounds, unless, in addition to the affidavit of the debt, the party applying shall also make oath, that he verily believes that, unless a writ of *capias* be allowed, the debt will be lost.

Proviso as to an Arrest.

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Sec. 3. The summons or *capias* shall be served on such defendant at least three days previous to the day on which such writ shall be made returnable as aforesaid. Time of Service.

Sec. 4. The Forms of the writs of the summons, *capias*, and execution, to be used by the Justices of the Peace under this Act, shall be the same in every respect as those described in an Act made and passed in the forty-eighth year of the reign of His Majesty King George the Third, entitled, "An Act for the Summary Trial of Actions." Concerning Forms of process.

Sec. 5. The fees to be taken and received in all causes before such Justice or Justices shall be as follow :

Justice's Fees.

On Writ of Summons,—Two Shillings.

On *Capias* and Affidavit,—Two Shillings and Sixpence.

On Judgment,—One Shilling.

On Execution,—One Shilling.

Constable's Fees.

Service,—One Shilling.

Travel,—Three-pence per mile.

Witnesses.

Each,—Two Shillings and Sixpence, and Travel,—Three-pence per mile.

Subpoena,—One Shilling.

Sec. 8. If any Justice or Justices shall ask, demand, or receive any greater or other fees than are herein allowed, he or they shall forfeit and pay a fine of ten pounds, together with costs, to be recovered in any action or suit, by him or them that will sue for the same, in any Court of Record within the county, where such greater fee or fees than are herein allowed shall have been received. *Temporary.* Excessive Fees.

The Forms of writs, mentioned and referred to in the foregoing Act, are as follow :—

Summons.

County of } To
 } You are hereby required to summon A. B. of —,
 [Seal.] to appear before — on the — day of —, at —
 o'clock, in the —, to answer to C. D., in the sum of —,

and make return hereof on or before said day. Witness —
hand and seal, the —.

A. M., J. P.

Capias.

County of } To either of the Constables of —.

[Seal.]

You are hereby commanded to take A. B. of —, and him safely keep, so that you have him before —, at —, on the — of —, to answer to C. D., in —. Hereof fail not, and have then there this writ. Given under — hand and seal, at —, the — day of —.

A. M., J. P.

Execution.

County of } To —

[Seal.]

WHEREAS judgment hath been awarded against A. B., of —, at the suit of C. D., for the sum of —, and — more for costs; These are to command and require you, to levy from off the goods and chattels of the said A. B., the said sums, making together —, by sale of the said goods and chattels; and for want thereof you are hereby commanded to take the body of the said A. B., and him to commit to His Majesty's gaol in —, there to remain until he pay the sum above mentioned, with your fees, or that he be discharged by the said C. D., or otherwise by order of law. Hereof fail not, and make return of this writ to me within twenty days. Witness my hand and seal, the —.

A. M., J. P.

[NOTE: The foregoing writs may be directed thus:— "To either of the Constables of — in the said county;" or in this manner,— "To A. C., one of the Constables of —, or to either of the other Constables of — in the said county." No constable can execute any such writ out of the jurisdiction of the Justice, nor out of the township for which he is appointed, unless specially named for that purpose in the writ. If the action is before two Justices, the writs must of course be filled up in the names of both, and be signed and sealed accordingly.]

By the 6 G. 4, c. 10. 3 V. 210, made in continuation and

Witness —

J. P.

of —, and
 —, at —,
 —. Hereof
 under — hand

J. P.

against A. B.,
 —, and —
 require you, to
 A. B., the said
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continuation and

amendment of the foregoing Act of the 3 G. 4, c. 30, it is provided, that " Nothing contained in the Act hereby continued, shall extend or be construed to extend, to permit the trial of any action, in a summary way, which may involve the title to land. *Duration not limited.*

The following is the Act of the 7 W. 4, c. 60, Sess. 1837.—Sec. 1, continues the two Acts herein before recited, except as hereby altered or amended.

Sec. 2. It shall be lawful for any two Justices of the Peace, to proceed in and with, and to give judgment, and issue execution, in any action or suit, which, if the whole dealing or cause of action therein did not exceed five pounds, could or might now, under the Acts hereby continued, be tried and determined before such two Justices, in the same manner, and by the same course of proceedings, as by the said Acts hereby continued, or hereinafter is directed, notwithstanding the cause of action or whole dealing shall exceed five pounds; provided, that the cause of action, or whole dealing in such action, do not exceed ten pounds.

Sec. 3. In every case where the whole dealing or cause of action shall exceed five pounds, the summons or capias shall be served upon the defendant or defendants, at least six days before the day on which the same shall be returnable.

Sec. 4. If either the plaintiff or defendant, in any action in which the whole dealing or cause of action shall exceed five pounds, shall, two days before the day on which the writ of summons or capias shall be returnable, notify any one of the said Justices, that it is the desire of such party, to have a Jury in such cause, then the said Justice shall issue a venire, directed to any constable, not being a person of kin to either party in the cause, or interested in the event thereof, commanding such constable to summon a Jury of three fit and proper persons, of and from the neighbourhood, to appear before the two Justices who are to try such action, at the time and place when and where the defendant is summoned, or bound and required to appear.

Sec. 5. Every Juror, so summoned, who shall neglect to appear as required by the venire aforesaid, shall be held to be liable to a penalty of five shillings, which shall be levied by warrant of distress against the goods and chattels of such Juror, to be issued by the said two Justices, upon the oath of the said constable that he summoned such Juror, at least twenty-four hours before the time he shall be required to appear, unless such Juror shall make it appear to the said two Justices that he had some legal and sufficient excuse for his absence.

Sec. 6. Such Jury shall be sworn by one of the said

Actions invol-
 ving Titles to
 Land not to be
 tried before
 Justices.

Debts be-
 tween £5 and
 £10 may be
 recovered be-
 fore two Jus-
 tices.

Service of
 Process.

Jury may be
 ordered.

Juror not ap-
 pearing.

Trial and Ver-
 dict.

two Justices, before whom such cause shall be tried, in the presence of both Justices, and in open court, well and truly to try the cause, according to the evidence, and the allegations of the parties; and the evidence of the witnesses shall be made and delivered in the presence and hearing of the said Justices and Jury so impannelled; and having heard the directions of the said Justices, the Jury shall, if they require it, retire to some convenient apartment, under the charge of some constable, duly sworn to keep such Jury together without meat or drink, and not to suffer any one to speak to them, or to speak to them himself, without leave of the said Justices, and shall, when agreed, return their verdict; whereupon judgment shall be given for the party in whose favour such verdict shall be returned, with costs.

Challenging
Jurors.

Sec. 7. Either party shall be permitted to make any legal challenge for cause, to any of the said Jurors; and if any such challenge be allowed; or in any case where any person shall not appear, who is summoned, the said Justices shall direct the said Jury to be filled up, by any person then present, who may not be liable to any such legal challenge, or by directing any constable to summon any other person, not liable to such challenge; and if, after hearing the testimony and parties, and direction of the Justices before whom such trial shall be had, such Jury shall find it impracticable to agree on their verdict, they shall be discharged, and a new Jury summoned for another day, which shall be appointed for the trial of the cause.

Discharging
Jury.

Fees.

Sec. 8. The fees to be allowed, for and in respect of any cause tried by a Jury as herein before directed, over and above, and in addition to the fees already allowed by law, for causes between three pounds and five pounds, shall be as follows:—

To the Justice, for the Venire,—One Shilling.

To the Constable, for summoning the Jury,—One Shilling.

To each Juror,—One Shilling.

Set Off.

Sec. 9. Whenever, in any case, a defendant or defendants shall, before any Justice or Justices, as a defence, produce a set-off, it shall be lawful for the Justice or Justices to enquire into and determine upon such set-off; and in case of finding it sufficient in amount to meet the plaintiff's demand, to give judgment for the defendant or defendants, with costs of the defence, whether the amount of such set-off shall or shall not be greater than the sum for which a plaintiff could or might maintain an action against the said defendant or defendants. Provided always, that where such set-off shall be of greater

amount than the sum for which an action might be maintained before such Justice or Justices, the said Justice or Justices shall not give judgment in favor of the defendant or defendants, for any excess of such set-off, over the claim or demand of the plaintiff or plaintiffs, but only for the costs of the defendant or defendants.

Sec. 10. In case of any appeal from the judgment of any Justice or Justices of the Peace, before such appeal shall be allowed, the party making the same, shall make and file with such Justice or Justices, an affidavit in writing, that he is really dissatisfied with such judgment, and feels aggrieved thereby, and that such appeal is not prosecuted solely for the purpose of delay.

Sec. 11. When any plaintiff or plaintiffs shall sue out any writ of summons, or *capias*, such plaintiff or plaintiffs shall file with the Justice or Justices, an account or written statement of his demand against the defendant or defendants, at the time of issuing out such writ; and if such action be brought on any written instrument, shall file the same with such Justice or Justices.

Sec. 12. Nothing in this Act contained, shall extend to the counties of Cape Breton, Richmond, or Inverness. *Duration not limited.*

NOTE. It is proper to observe here, that no part of any of the foregoing Statutes is at present of any force or effect within the counties of the Island of Cape Breton. The summary trial of actions before Justices, for the recovery of debts, is established and regulated in all of those counties, by the Statute of the 7 W. 4, c. 59, Sess, 1837, which is the only Statute on the subject now in force therein, and the several enactments of which are as follows:

Sec. 1. The Act for establishing Courts of Commissioners in the Island of Cape Breton, is hereby repealed, from and after the first Wednesday of May next; on which day, and after the passing hereof, this Act shall come into operation; and the parties who shall have obtained judgments before that day, in any of the Courts established under the aforesaid Act, shall have power to issue execution thereon, and to enforce the same, in like manner as if such Act had not been repealed.

Sec. 2. After the first day of June next, all debts owing by any person within the said Island, where the whole dealing or cause of action shall not exceed five pounds, may be sued for and recovered before one Justice of the Peace, if the ba-

Appeal.

Filing statement of demand.

Summary trials in the Island of Cape Breton.

Recovery of Debts not exceeding £5 in the Island of Cape Breton.

lance or sum demanded do not exceed three pounds ; and before two Justices of the Peace, if the balance or sum demanded be more than three, and do not exceed five pounds ; and such Justices shall have no jurisdiction or cognizance whatever, of any other causes of action, excepting only for debts as aforesaid, and in such other cases as are now, or hereafter may be provided by law.

Regulations.

Sec. 3. The following regulations shall be strictly observed and kept, in all civil suits to be commenced and prosecuted before Justices of the Peace in said Island, that is to say :—

Filing statement of demand.

1. Every person applying to a Justice for process, shall, at or before the issuing of the same, file with the Justice before whom such process shall be returnable, a statement or particular of his demand or cause of action, or the promissory note, or other instrument on which he sues ; and the defendant shall be entitled to a copy of such statement, note, or instrument, when he shall require the same to be furnished to him by such Justice, without fee therefor.

Who shall serve Writ.

2. The writs of summons, capias and executions, to be used by the Justice, shall be in the Forms annexed to this Act.

3. Writs of summons and capias, may be served by any constable of the county where the defendant resides, or by any other person who can read and write, and may, at the instance of the plaintiff, be specially appointed by the Justice, and whose name shall be indorsed by the Justice on the writ, at or before the delivery thereof to such person ; provided, that no person other than a constable, shall be entitled to any fees upon the service of such writ.

Service of Writ.

4. Writs of summons and capias shall be served at least six days before the time of appearance, by delivering a copy thereof to the defendant, and the constable or other person serving the same, explaining the meaning and contents thereof, if required so to do.

Arrest.

5. No person shall be arrested in any case, for a debt due by him under twenty shillings, nor shall any person be arrested for a debt exceeding twenty shillings, and less than three pounds, unless in addition to an affidavit of the debt, the plaintiff or his agent shall also make oath, that he verily believes the debt will be lost if a writ of capias is not allowed.

Certifying service of Writ.

6. The service of process shall be authenticated, by an affidavit to be made by the constable or other person serving the same, before any Justice, certifying that he has delivered a copy thereof to the defendant, and explained the meaning and contents thereof, if required so to do ; and without such affidavit, or the defendant personally appearing to answer the suit, the Justice shall not proceed therein.

7. When the plaintiff and defendant reside in the same township, the suit shall be brought before a Justice residing therein. Provided, there is a Justice residing in such township, and if not, the suit shall be brought before the Justice residing nearest to the limits of such township.

Before what
Justice suit
shall be.

8. The hearing of all suits shall be commenced between the hours of ten o'clock in the forenoon, and four o'clock in the afternoon, and shall always be open to the public.

Time of hear-
ing.

9. In all cases where the plaintiff's demand or cause of action, is not confessed by the defendant, in person, or in writing under his hand, the same shall be established, whether the defendant appear or no, on the oath of one credible witness; except only where the plaintiff sues on a promissory note, in which case, if the defendant do not appear, it shall be sufficient, when there is a subscribing witness, to prove his hand writing, by himself, or any other witness; and when there is no subscribing witness, to prove the making of such note by the defendant.

Proving plain-
tiff's demand.

10. Whenever the defendant shall establish a set off, arising out of a debt, and equal to the demand proved by the plaintiff, or any other sufficient defence thereto, the defendant shall have judgment entered for him, with costs. If the set off be less than the plaintiff's debt, the plaintiff shall have judgment for the residue only, with costs; and if it shall exceed the plaintiff's demand, as proved, and the whole amount of such set off do not exceed five pounds, the defendant shall have judgment for the excess or balance, with costs.

Set off.

11. Whenever a defendant shall prove that he has tendered the amount before suit, and shall pay the same, at or before the trial, unto the hands of the Justice, he shall be entitled to a judgment for his costs, to be paid by him out of such money.

Tender.

12. When any judgment shall exceed twenty shillings, either party may appeal to the Supreme or Inferior Court, at the next term of the one or the other which is to happen and be held, next after such Judgment has been given, in any of the counties, respectively, in said Island; and such party appealing, or his agent, when he himself is absent, shall make and file an affidavit in writing, which the Justice shall administer, that he is really dissatisfied with, and feels aggrieved by such judgment on the merits, and does not appeal therefrom, solely for the purpose of delay; and such party appealing, or his agent, when he himself is absent, shall likewise enter into a bond with two sufficient sureties, in a penalty of double the amount of such judgment, and with a condition thereto annexed, that the party, so appealing, shall abide by and perform the judgment of

Appeal.

the Court to which such appeal shall be made and allowed, and which said bond and condition shall be in the Form annexed to this Act.

Proceedings
on Appeal.

13. When such affidavit and bond are duly made, or offered to be made, at any time within one month after judgment, the Justice shall allow such appeal to the Supreme or Inferior Court, according as the next sitting of the one or the other is to happen and be held, first after the allowance of the appeal; and execution, if not issued, shall be thereafter entirely stayed; and on the first day of the next sitting or term of the Supreme or Inferior Court, to which such appeal hath been allowed, unless he shall receive notice in writing, signed by both parties or their agents, to the contrary, the Justice shall retain and file, to and with the Clerk of such Court, all the papers and proceedings in the cause, with a transcript of the judgment, and the appeal bond, and affidavit aforesaid; and the party appellant shall enter such appeal, upon the docket of sub-summary causes in said Court, and the Court shall proceed to examine the witnesses, and hear the said cause in a summary way, or shall order a Jury therein, if they shall think fit, and final judgment shall be given on such appeal; with the like costs as are now allowed in sub-summary causes; and execution shall be issued thereon, for the amount of the judgment and costs: which judgment, in the event of the original judgment being reversed after the same has been enforced, shall include the full amount levied by virtue thereof; but if the party appellant shall not enter his appeal in such case, the original judgment shall be affirmed, at the instance of the opposite party, on the last day of the Term, with sub-summary costs, and execution shall be issued thereon.

Return of Ex-
ecution.

14. Every execution on any judgment, shall be returnable in thirty days from the day on which it issued.

Issuing Exe-
cutions.

15. No execution shall be issued by a Justice, after the expiration of one year from the time of rendering judgment; and if it be returned in whole or in part unsatisfied, a further execution, for the amount remaining due thereon, may be issued.

Levying Exe-
cution.

16. The constable to whom any execution shall be delivered, shall proceed forthwith to levy the same, and unless the debt and costs be paid, shall take sufficient goods and chattels of the party against whom the same is directed, to satisfy the same; and shall advertise the said goods and chattels in two or more public places in the township, for sale by public auction; and such advertisement shall describe the goods and chattels taken, and shall be put up at least five days before the time appointed for the sale.

Selling Goods
taken.

17. At the time and place so appointed, if the amount

remain unpaid, the constable shall expose the goods to sale at auction to the highest bidder—he shall forthwith return the execution, and pay the debt and costs levied, to the plaintiff, or his agent duly authorised, returning the overplus, if any, to the person against whom the execution issued, or his agent duly authorised, or in his absence to the Justice who issued the same, for the use of such party; if the goods shall remain unsold for want of buyers, the constable may adjourn the time of sale for any period not less than twenty-four hours, nor more than six days, and may in such case proceed to advertise anew, and sell the same, after the return day of the execution; but immediately after such sale he shall make return and payment as above specified; and whatever goods remain unsold, after the execution is fully satisfied, shall be restored to the party from whom the same were taken.

18. No constable shall, directly or indirectly, purchase any goods or chattels at any sale made by him upon execution, but every such purchase shall be absolutely void.

Constable not to purchase goods.

19. For want of goods and chattels whereon to levy, the constable, unless otherwise directed by the party in whose favour such execution hath issued, shall take the body of the person against whom the execution is directed, and convey him to the common gaol of the county, the keeper whereof shall keep such person in safe custody, until the debt and costs shall be paid, or he is thence discharged by due course of law; and for every person so committed to gaol on execution, the keeper shall be entitled to a fee of two shillings, and no more.

Taking body on Execution.

20. Every person so committed to gaol, shall be entitled to the full benefit of the Acts made for the relief of Insolvent Debtors.

Insolvent Debtors.

21. If a constable neglect to return an execution within ten days of the return thereof, unless with the consent of the party in whose favor the same was issued, or neglect to pay over the money received or levied thereon, for the space of five days after he shall have received the same, or to pay over the overplus as aforesaid, on demand, the party entitled thereto, may maintain an action for money had and received, against such constable, and shall recover therein the amount of the execution, or of the overplus thereon, with interest from the time such money was received; and a Justice of the Peace shall have jurisdiction of such action, though the amount claimed exceed five pounds.

Constable failing in duty under Execution.

Sec. 4. The fees to be taken in all causes before such Justice or Justices, shall be as follows:—

Justice's Fees.

On Writ of Summons,—Two Shillings.
 On Capias and Affidavit,—Two Shillings and Sixpence.
 On Judgment,—One Shilling.
 On Subpœna,—Sixpence.
 On Execution,—One Shilling.

Constable's Fees.

Service of Process,—One Shilling.
 Travel,—Three-pence per mile, to be computed from the place where the process is returnable, to the place of residence of the defendant.
 Poundage on sale of goods, and paying over the proceeds,—Sixpence per pound.

Witnesses' Fees.

Each,—Two Shillings and Sixpence; and Travel,—Three-pence per mile, to be computed from the witnesses' place of residence within the county, to the place where the process is returnable.

Excessive
Fees.

Sec. 5. If any Justice, or constable, or gaoler, shall ask, demand, or receive, any greater or other fees than are herein allowed, he or they shall forfeit and pay a fine of five pounds, together with costs; to be recovered in an action of debt, by any one that will sue for the same, in the Supreme or Inferior Court for the county; and such action shall be commenced by a writ of summons, setting forth, that the defendant therein is indebted to the plaintiff, by virtue of this Act, in the amount of the said fine, and declaring the fees, in respect whereof the same is demanded; and such action shall be heard and determined in a summary way, unless the party shall demand, or the Court shall think fit to order, a Jury to try the same.

Explanation
of terms.

Sec. 6. Whereas in the foregoing provisions, one Justice is named, the same shall be understood as applying to the Justice who shall first sign the writ, in all cases where two Justices must be present at the trial; and whereas, words importing the singular number, or the masculine gender, are used; yet the said provisions shall be understood to include several matters, as well as one matter, and several persons as well as one person, and females as well as males.

Sec. 7. This Act shall continue and be in force for two years, and from thence to the end of the then next Session of the General Assembly.

Form of Summons.

To either of the Constables of —.

You are hereby required to summon A. B. of —, (yeoman,) to appear before —, at —, on the — day of —, at — o'clock in the —, to answer to C. D. in the sum of —, and make return hereof on or before the said day. Witness — hand and seal, at —, the — day of —.

[Seal.]

A. M., J. P.

Capias.

To either of the Constables of —.

[Seal.] You are hereby commanded to take A. B. of —, (yeoman,) and him safely keep, so that you have him before —, at —, on the — day of —, to answer to C. D. in the sum of —. Thereof fail not, and have then there this writ. Given under — hand and seal, at —, the — day of —. By oath for —.

A. M., J. P.

Execution.

To either of the Constables of —.

[Seal.] WHEREAS judgment hath been awarded against A. B. of —, at the suit of C. D., for the sum of —, and — more for costs; These are to command and require you, to levy from off the goods and chattels of the said A. B., the said sums, making together —, by sale of the said goods and chattels, after duly advertising the same; and for want thereof, you are hereby commanded to take the body of the said A. B., and him to commit to His Majesty's gaol in —, there to remain until he pay the sum above mentioned, with your fees, or that he be discharged by the said C. D., or otherwise by order of law. Therof fail not, and make return of this writ to —, within thirty days. Witness — hand and seal, at —, the — day of —.

A. M., J. P.

Form of Appeal Bond.

Know all men by these presents, that we, A. B., E. F., and G. H., (names of appellant and sureties, with places of residence and additions,) are held and firmly bound to C. D., (name and description of party against whom the appeal is al-

lowed,) in the penal sum of —, of lawful money of Nova Scotia, to be paid to the said C. D., (name of person against whom the appeal is allowed,) his certain attorney, executors, administrators, or assigns; for which payment well and truly to be made, we bind ourselves, and each of us by himself, our, and every of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the — day of —, in the year of our Lord one thousand eight hundred and —.

Whereas in a certain cause between the said A. B. and the said C. D., tried before — Justice of the Peace for the county of —, on — day of — judgment was given for — [here state the judgment, and for whom given, with the sum,] and the said A. B. [name of party appealing,] has desired to appeal against such judgment: the condition of the above obligation is such, that if the said A. B. at the next Term of — [here state the Term and Court to which this appeal is allowed,] shall duly enter, and prosecute with effect, his said appeal, and shall proceed therein, and shall abide by and fulfil the judgment of said Court, to be given on such appeal, then the above obligation to be void, otherwise to remain in force.

	A. B. [Seal]
Signed, sealed, and delivered }	E. F. [Seal]
in the presence of }	G. H. [Seal]

[The Act relating to setting off mutual debts, will be found recited under the division which treats of the defendant's Set-off. The Act concerning the issuing of an execution after an appeal, also the Statutes which exempt wearing apparel, bedding, tools of trade and certain other articles from being taken on an execution, are appropriately set forth under the last division, which relates to the proceedings after judgment; and the Statute authorising the discharge of insolvent debtors, confined on executions upon judgments by Justices, with the proceedings thereon, will be found under the title,—Insolvent Debtors.]

II. OF THE PERSONS WHO MAY, AND THOSE WHO MAY NOT SUE OR BE SUED; AND HEREIN, OF THE JOINDER OF PARTIES.

1. Who MAY, and who MAY NOT Sue, or be Sued.

AN alien friend, that is one belonging to a country at peace with us, may sue or be sued here, for a debt contracted here by or with a subject of our government, but not if it was

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contracted out of this Province. *See Arch. P. & E. 3. 5. Arch. Pr. 1 V. 43.*

An idiot, or lunatic, and also a deaf or dumb person, may sue or be sued for debts, and may be arrested for the same, in the same manner, and under the same circumstances as other persons. In the case of an idiot plaintiff, any one who prays to be admitted as his friend may sue for him, and if defendant, any one who can make a better defence, shall be allowed to defend for him. *2 Arch. P. 149.* [It would seem that the same must be the case with regard to lunatics, and deaf and dumb persons.]

A man cannot sue his wife, or a woman her husband, in any form of action whatever, for reasons sufficiently obvious; and even if one have a cause of action against the other, before marriage, their intermarriage is a release of the action. *Arch. Pl. & Ev. 37.*

A married woman cannot sue or be sued alone, for a debt contracted before marriage. Her husband must join or be joined in the action. Neither can she sue or be sued alone, for a debt incurred during marriage; whether she live with her husband, or apart from him, even under articles of separation, with a separate maintenance. But she may sue or be sued alone, if the husband be in exile,—have abjured the realm,—be transported,—or be an alien enemy, out of the realm,—or if they have been divorced. In other cases, the husband alone must be sued for debts contracted by the wife during marriage. *Id. 39—56. 2 Arch. P. 147.*

For the labour or service of the wife, or contract or promise to her during marriage, the husband alone may sue. *Arch. P. & Ev. 39.*

If a debt arises from the labour or services of a child under the age of twenty-one years, living with the father as part of the family, and labouring for him, the action for the recovery of such debt should be by the father, in the same manner as if the service were by himself. But if such child be living away from his father, and labouring or acting for himself, or if his parents be dead, and in other cases, he may bring an action for any debt which has become due to him. *See Bac. Abr. 3 V. 141.*

An infant, or person under twenty-one years, is not liable to be sued for any debt contracted by him, unless it be for necessities; such as necessary meat, drink, apparel, proper instruction, medicines, medical attendance, washing, and the like. Necessaries for such infant's wife, or child, are necessities for him, and he shall be sued for them, as if they were furnished to himself. If, however, an infant is living under the

Husband and
Wife.

Married Wo-
men.

Infant.

roof of his parent, who provides every thing which in his judgment appears to be proper, the infant cannot bind himself to a stranger, even for such articles as might, under other circumstances, be deemed necessities. Contracts entered into by infants for the maintenance of their trade, are not binding on them, as in the case of goods bought by them to be sold again. If, however, goods which are not necessities are delivered to an infant, who after full age ratifies the contract, by a promise to pay, he is bound, and may be sued for such debt. 1. *Scho. N. P.* 122.

One partner cannot sue another, for money received or paid, or goods furnished, or service performed, on account of the partnership. *See Arch. P. & E.* 37.

2. Of the Joinder of Parties.

Partners in
Trade.

In the case of partners in trade, and in all other cases where a debt is due to several persons jointly, they should all join in an action for the recovery of it. But if only one, or a certain number of them sue, and no objection is taken to it, he or they may recover. *See Arch. P. & E.* 48—51.

Where a debt is due by partners or others jointly, they must all be sued in an action to recover it. *Id.* 67. But in the case of a joint and several contract, as on a joint and several note of hand, either one alone, or both may be sued.

Husband and
Wife.

Where the wife is the meritorious cause of action, as where labour or service has been performed by her during marriage, she may join with her husband in bringing the action, or he may sue alone. So upon a promissory note made to the wife during coverture, she may join with him in bringing the action, or he may sue alone. *Id.* 40.

[NOTE. In these cases it will be most convenient and proper for the husband alone, to sue.]

Husband and wife must join as plaintiffs, in an action for the recovery of a debt due to the wife before marriage. *Id.* 37.

So actions for debts due by the wife before marriage, must be against husband and wife. *Id.* 56.

III. OF THE TIME LIMITED BY LAW FOR THE RECOVERY OF DEBTS, AND ESTABLISHING MATTERS OF DEFENCE.

By the Statute of the 32 G. 2, c. 35. 1 V. 35. Sec. 4. All actions of account, and upon the case, (other than such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants,) all actions of

debt, grounded upon any lending or contract without specialty, or any of them which shall be sued or brought, shall be commenced and sued within six years next after the cause of such action or suits, and not after.

Sec. 8. Provided, nevertheless, that if any person or persons that is or shall be entitled to any such actions of debt, be, or shall be, at the time of any such cause of action given or accrued, fallen or come within the age of twenty-one years, or a married woman, or insane, or imprisoned, or beyond the seas; that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such time as is before limited, after their coming to or being of full age, discover, (loosed from marriage,) or of sane memory, or at large, and returned from beyond the seas, as by other persons having no such impediment should be done.

Sec. 9. If any person or persons against whom there is or shall be any cause of suit, or action of debt grounded upon any lending, or contract without specialty, shall at the time of any such cause of suit or action given or accrued, fallen, or become, be beyond the seas, that then such person or persons, who is or shall be entitled to any such suit or action, shall be at liberty to bring the said actions against such person and persons, after their return from beyond the seas, so as they take the said actions, after their return from beyond the seas, within the said time of six years, limited for the bringing of the same by this Act. *Perpetual.*

This Statute extends to actions of assumpsit upon bills of exchange, or promissory notes, as well as to other cases of debts or promises. If a bill of exchange, or order, or note of hand, be given for money lent, or the like, the time of limitation begins to run, not from the time of the loan, but from the time the bill, order, or note became due; and in the case of a note, &c. payable after sight, not until after it has been presented for payment. But a promissory note payable on demand, is payable immediately, and this Statute of limitation runs from the date of the note, and not from the time of demand. If the promise be to do a thing upon request, or upon the happening of a certain event, the time of limitation does not begin to run until after request made, or the event have happened. So if the consideration be executory, as in the case of contracts for seamen's wages, or the like, the time of limitation does not commence until after the consideration has been executed.

The exception in the Statute,—of actions upon accounts concerning the trade of merchandise between merchant and merchant, their factors and servants, extends only to cases

Persons beyond Seas.

Cases in which the Statute of Limitations applies.

Accounts between Merchants and Tradesmen.

where there are mutual accounts and reciprocal demands, and where the accounts are still open and running, and not to cases where the account has been stated and the balance struck ; nor to cases where the items are all on one side. If any of the items in such mutual and open account, be within six years of the commencement of the action, it is immaterial whether the parties are merchants or not, because such item is deemed equivalent to a subsequent promise reviving the debt, but if none of the items be within six years, it is necessary that the parties be merchants, and the account relate to the trade of merchandise, to bring it within the above exception. Where the case does not come within this exception in the Statute, yet if any of the items be within six years, the plaintiff shall recover for them, although not for the others.

Acknowledgment after six years.

Also, although the time limited by the Statute have elapsed before any action is brought, yet if the defendant promise to pay the debt, or even acknowledge it within the six years, the debt is thereby revived, and the case taken out of the Statute ; even although such promise or acknowledgment be after the commencement of the action. And the slightest acknowledgment has been deemed sufficient for this purpose ; such as this, " I am ready to account but nothing is due to you," or, " If he has any demand on me it shall be settled," or, " What an extravagant bill you have delivered to me ;" or where the defendant says, " I do not consider myself as owing Mr. B. a farthing, it being more than six years since I contracted,—I have had the wheat I acknowledge, and I have paid some part of it, and £26 remain due ; or where the party says, " The bill of exchange is out of date, and it is not in my power to pay it," or the like acknowledgments. Even when the defendant, on being served with a writ, wrote a letter to the plaintiff's attorney, couched in ambiguous terms, neither expressly admitting or denying the debt, it was left to the Jury, to say whether it amounted to an acknowledgment. But merely saying,— " I acknowledge the receipt of the money, but she gave it me." or, referring to his attorney, who said that " if the plaintiff had any letter which would bind the defendant, the debt should be paid," does not amount to an acknowledgment or promise.

If one of several makers of a joint and several promissory note, acknowledge the debt, or pay a part of it, within the six years, it is sufficient to take the case out of the Statute, as against the others, and may be given in evidence in a separate action against any of them. *Arch. P. & Ev.* 27, 28. 1 *Selv. N. P.* 135—9.

NOTE. It may be well to mention here, that the rules of

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law, and the decisions contained under this division, and the preceding one, are set forth, as well by way of information and caution to the Justice, previous to his issuing any process, as to guide him on the trial.

IV. THE ORDER AND MANNER OF PROCEEDING IN INSTITUTEING AND CONDUCTING SUCH ACTIONS.

If a plaintiff commences his action by writ of summons, no previous affidavit of the debt is requisite, and this *must* be the process in all cases where the amount or balance actually due, is under twenty shillings ; as it has been already seen, that by the express words of the Act, no person shall be arrested for a debt under that sum. Neither can he be arrested for any larger sum, not exceeding £3, unless the creditor shall also state in his affidavit, that he verily believes, that unless a *capias* be allowed, the debt will be lost. This latter part of the affidavit is not requisite where the sum due is above three pounds. Where a creditor concludes on proceeding by a writ of *capias*, the affidavit must be made previous to issuing the writ, and it may be in the following Form.

County of } A. C., of — in the said county, yeoman,
} maketh oath and saith, that A. D. is justly indebted to this deponent in the sum of —, upon a note of hand made by the said A. D., payable to this deponent or order at a certain day now past, [or on demand, as the case may be,] [or, for goods sold and delivered by this deponent, to the said A. D., or,—for work and labour done and performed by this deponent for the said A. D., or, for money paid and expended by this deponent for the said A. D., or,—for money lent, or,—money had and received, or according as the case may be.] And this deponent further maketh oath, that he verily believes, that unless a writ of *capias* be allowed to him against the said A. D., the said debt will be lost.

Affidavit of
Debt.

A. C.

Sworn before me, the
— day of — 183.
A. M., J. P. }

Where the action is brought before two Justices, it will be sufficient for the affidavit to be made before, and to be signed by one only, but the writ must be signed and sealed by both. The sum sworn to, should be endorsed on the writ and copy. In every case, the summons or *capias* should be made returnable at such a time as that it may be served at least three full days before the return. It is not mentioned in

Directions.

any of the Acts, whether a party arrested on a *capias* shall be let to bail for his appearance at the return of the writ. Some of the former and expired Acts concerning such Summary Trials, contained a provision to that effect, but as it is not mentioned, or even alluded to in any of the Acts on the subject, now in force, it would seem, that the defendant is not entitled to *claim* such privilege of being released on bail, but must be committed to gaol on the *capias*, and remain in custody until the trial, unless any arrangement to the contrary is made with the creditor, at his own risk. In every case, the writ should be returned to the Justice before the trial comes on, with a return thereon by the constable, of his having served it. The Justice will of course attend to hear the cause at the place mentioned in the writ, and it will be proper for him to do so, as nearly as can be made convenient, at the hour appointed, and on the writ being returned as aforesaid, the plaintiff may produce and prove his demand and have judgment, although the defendant does not appear. In such case, the defendant should previously and openly be called to appear and answer. If the defendant appears, and applies to have the cause adjourned for trial on another day, on account of the absence of a witness, or any other cause, the Justice may grant or refuse the application, as he may in his discretion think just and equitable, according to circumstances; and if such adjournment is granted, both parties must be informed by the Justice of the subsequent *day, hour, and place* appointed for the trial. When the cause is brought on for trial, the defendant should not be interrogated, or particularly questioned as to the claim of the plaintiff, but may simply be asked, what he has to plead or answer to the action; and if he voluntarily confesses the demand, judgment may of course be given for the plaintiff, for the amount so confessed, without any further proof. If he denies the debt, the plaintiff must then be called upon to produce his proof. It must here be observed, that neither the plaintiff or defendant can in any case, or under any circumstances, be either obliged, or be permitted, to be sworn and give evidence. It is believed that this has been frequently permitted, or indeed, may rather be said to be very generally practised, but such a proceeding is altogether illegal and improper. It has already been mentioned, that the same rules of evidence apply in these summary causes before Justices, as on trials before the higher Courts. For such rules at large, and especially, as to *who may, and who may not* be admitted as witnesses, when objected to, reference must be had to the Title—Evidence, in this Work. It may be sufficient here, briefly to say, that a person who does not believe in the existence of a God, in a future state of rewards

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and punishments, and in the moral obligation of an oath,—also young children, or others who have not discretion sufficiently to understand the nature and obligation of an oath, shall not be allowed to give evidence. Also, that a wife cannot be a witness for or against her husband, and that no person can be permitted to give evidence, if objected to, who to a certainty will either gain or lose by the event of the cause, whether such gain or loss be direct and immediate, or consequential only. The defendant is of course entitled to question and cross examine the witnesses of the plaintiff, and when the plaintiff has closed his proof, the defendant must be allowed to make his defence, to produce any receipt or discharge, or any account he may have as a set off, and to prove the same in like manner, and under the like rules of law and evidence, as in the case of the plaintiff. When all the evidence on both sides is closed, and the Justice, on a consideration of the testimony, and the law relating to it, has concluded what his judgment shall be, he must declare it openly, so that both parties may be apprised of it. If either party is dissatisfied with the judgment, and desires an appeal, this is the proper time to make it, and by the words of the Act, it may be done in any case where “the debt or cause of action,” amounts to twenty shillings or upwards. More particular information respecting such appeals, and as to other proceedings after judgment, will be found under the last division of the Title.

V. THE GROUNDS OR CAUSES OF ACTION IN GENERAL, WITH THE GENERAL RULES OF LAW AND EVIDENCE RELATING TO THE SAME, RESPECTIVELY, AND HEREIN, OF THE STATUTE OF FRAUDS.

1. *Of Promissory Notes.*
2. *Of Orders or Inland Bills.*
3. *Of Goods Sold and Delivered.*
4. *Of Work and Services.*
5. *Of Money paid and expended.*
6. *Of Money had and received.*
7. *Of Necessaries furnished,—Freight,—Awards,—and other grounds of Action.*
8. *Of Account Stated.*
9. *Of the Statute of Frauds.*

1. *Of Promissory Notes.*

A PROMISSORY NOTE is a promise in writing, to pay to A. or order, or to A. or bearer, a sum of money, either at

sight, or at a certain time after sight, or after date, or on demand.

By the 8 G, 3, c. 2. 1 V. 134, Promissory Notes made payable to a person, or his order, may be assigned by indorsement, the same as an inland bill of exchange; and the person to whom such note is payable, may maintain an action against the maker thereof; and so may the indorsee have his action either against the maker or indorser, the same as in the case of such inland bill; and the plaintiff, if he recover, may have execution for his debt, and also his costs. The action must be brought within six years. *Perpetual.*

This Statute is to be construed liberally.

Description of
Notes which
are valid and
negotiable.

A note promising to *account with* I. S. or order, has been construed as a promise to *pay* I S. or order. So a promissory note payable to B. (omitting the words, "or order") three months after date, is a good note. So where the promise was by A. to pay so much to B. for a debt due from C. to B. it was holden that it was within the Statute, being an absolute promise, and every way as negotiable as if it had been generally for value received. A promise, "to deliver money," or a promise that I. S. shall "receive money," or a promise to be "accountable," or "responsible" for money, will be a sufficient note.

Notes not negotiable.

The note, however, in order to be negotiable, must contain an *absolute* promise to pay money at all events, (and not a promise depending on a contingency,) and where the money, at the time of giving the note, becomes due and payable by virtue thereof, and not where it becomes due and payable by virtue of a subsequent contingency, which may perhaps never happen, in which case the money would never become payable. On this ground, the following notes have been adjudged not to be negotiable notes, viz.—A promise by defendant to pay to plaintiff £26, "within a month after Michaelmas, if the defendant did not pay the £26 for which the plaintiff stood engaged for his brother J. B." A promise to pay A. B. £100, value received, "on the death of C. D., provided he leaves either of us sufficient to pay the said sum, or if we shall be otherwise able to pay it." A promise to pay "A. or B. and C., £10, value received." A promise to pay money within so many days after the maker of the note should marry. 1 *Selv. N. P.* 378—9. *Chitty on B.* 149.

[NOTE. It is only intended to show here, that such notes are not negotiable, that is, cannot be indorsed so as to give the person to whom any such note may be indorsed, a right to recover against the maker; but the payee, or person to whom it is made, may sue the maker and recover, on proving that the

money had become due by the happening of the contingent event, although it would seem that he could not do so in a summary form before Justices, as the words,—“whole dealing, or cause of action,” in the Act relating to Summary Trials, seem to refer only to *absolute and unconditional* debts.]

A promissory note must be payable for money only. Hence, where the promise was to pay J. S. so much money, or to render the body of J. N. to prison before such a day, the note was holden bad, because the note was not necessarily and originally for the payment of money. The same, where the promise in the note was, to pay £300 to A., or order, in good East India bonds.

A promissory note to an infant when he should come of age, namely, on such a day, in such a year, is good, for here is no condition or uncertainty, only the time of payment is postponed. So where the note was to pay within a certain time after such a ship was paid off, it was holden good, because the ship would certainly be paid off, one time or other.

“A note beginning thus,—“I promise to pay,” and signed by two or more persons, is a several as well as joint note, and one or both may be sued.

If a promissory note appears on the face of it to be the separate note of A. only, A. and B. cannot be sued thereon as for their joint note, although it was given to secure a debt for which A. and B. were jointly liable.

If an action is brought on a note made jointly, but not separately, and some of the persons making the note are not made defendants, advantage can be taken of the omission.

It will be presumed that a note has been given for a good and valuable consideration, until the contrary appears.

A note is good without the words “value received,” also without any witness subscribed to it.

A note payable generally, without naming any time, is payable on demand, and may be sued upon immediately, without any previous formal demand of payment.

A note payable to *bearer* is good.

The name of the maker of the note must either be subscribed, or inserted in the body of it, but the latter will be sufficient, if written by him.

It is not necessary that any place should be named where the note is to be paid, but if any such place is named in the body of the note, and as a part of it, application should be made at such place, for payment.

Unless a note contain the words “or order,” “or bearer,” or some other equivalent words, authorising the person to whom it is made, to assign it, such note cannot be transferred,

Must be payable for money only.

Notes payable on an event certain, are good.

Joint and several Notes.

Consideration.

“Value received.”
Witness.
Time of payment.

Name of maker.

Place of payment.

Negotiability.

so as to give the assignee a right of action against the maker, or any other person except the one who indorsed it to him, unless the negotiable words were omitted by mistake, in which case they may be supplied.

Indorsement.

Where a note has been made payable to, or indorsed to a single woman, who afterwards marries, or where it is made during the marriage, the right of transfer rests in her husband, and he thereby virtually becomes indorsee, and may sue thereon in his own name, and need not prove any indorsement.

Where there are several partners, an indorsement may be made by one only, but if the note is to several persons not in partnership, it cannot be transferred by one only, but all must concur in doing it.

Where a note or bill is payable to a certain person, or bearer, it is transferable by mere delivery.

Notice of non-payment.

Where a note is in the hands of an indorsee, and he demands payment thereof from the maker, who refuses or omits to pay the same, notice of such refusal or default ought to be given by the indorsee himself, to the prior indorser or indorsers, (if more than one) within a reasonable time; otherwise the indorser will be discharged. But in such case if the indorser, subsequently, with a knowledge of all the circumstances, promise payment, he will be bound by it.

Alteration of Note or Bill.

If a bill or note be altered without the consent of the parties, in any material part, as in the date, sum, or time when payable, or consideration or place of payment, such alteration will render the bill or note wholly invalid, as against any party not consenting to such alteration; and this is the case, although it be in the hands of an innocent holder. *Selv. N. P. 378 to 386. Chitty on Bills, &c.*

Evidence.

THE evidence on the part of the plaintiff may be first noticed.

Producing Note in Evidence.

It is a general rule, that the original note must be produced in evidence. This rule is dispensed with in special cases only, as where it can be proved that the note has been lost, or destroyed by the defendant, or that it is in the hands of the defendant, and that he has had notice to produce it. In these cases, a copy of the note, or parol evidence of its contents may be received.

Proving Note.

In an action against the maker of a note, by the person to whom it is made, the hand writing of the maker must be proved by the subscribing witness, if there be any, if not, by some person who is competent to prove such hand writing. In

an action by the first indorsee against the maker, the same evidence as in the preceding case, together with proof of the indorsement to the plaintiff, will be necessary.

In an action against an indorser of a note, proof of the hand writing of the maker, or of any indorser prior to the defendant, (except the first,) is not necessary; but in this case it must be proved that payment was duly demanded of the maker, and that the maker refused to pay, or made default therein, and that notice of such refusal or default was given to the defendant within a reasonable time.

Where two joint makers of a promissory note are sued, one of them is a competent witness to prove the signature of the other.

If there be any mistake in the date or circumstances of the note, necessary to be explained, evidence must be adduced accordingly.

The admission of one of several makers of a promissory note, is sufficient to take the case out of the Statute of limitations, in a separate action against the other.

If there be a subscribing witness to a note, he must be produced by the plaintiff to prove it, if his attendance can be procured, and it is insisted on by the defendant. In other cases it will suffice to call a witness who is acquainted with the defendant, and who from seeing him write even his surname or other writing, or even from correspondence with him, has acquired a knowledge of his hand writing, and can swear to his belief that the subscription is the defendant's, even although he has only seen him write once.

Where there are several subscribing witnesses, it is sufficient to call one of them.

If the subscribing witness be dead, proof of his death and hand writing, it seems is sufficient, without proving the hand writing of the maker, or any other proof whatever of the identity of the parties; and this, even where the defendant signed by mark.

In general, the signature of a party to a bill or note, may be proved as against him, by his admission; but in general it only operates against the party making such admission. Hence, in an action by the indorsee of a note against the maker, proof of the acknowledgment of an indorser, is not sufficient evidence to prove his indorsement.

In an action against the indorser of a note, the hand writing of the maker need not be proved, nor can it be contradicted by the defendant. 1 *Selv. N. P.*, 390-2. *Ch. on Bills, &c.*

Some general rules of evidence, on the part of the Defendant, may now be mentioned.—

Proof in explanation of Notes.

Admission by one of joint makers.

Subscribing Witness.

Proof where Subscribing Witness is dead.

Admission of party.

Cases in which
a Note shall
be void.

In general, there will be a sufficient defence between the *original parties*, when it is shewn, that the note or bill was obtained by illegal imprisonment, or constraint, or by fraud or circumvention, and whilst the defendant was in a state of intoxication,—or by false pretence, that the party would do something which he immediately after declared he would not perform,—or where there has been *no consideration*, or only the *semblance* of it,—or where there has been an agreement all on one side,—or where there has been a consideration only for a part. [In this last instance, however, the plaintiff may recover before Justices to the amount of such part consideration, unless there were any fraud.] None of the foregoing circumstances however, will be a sufficient defence against an innocent indorsee or holder of any such note, having given a valuable consideration for it, and not knowing of any such fraudulent or illegal circumstance, or want of consideration, at the time of his receiving the note.

Verbal agree-
ment concern-
ing Note.

The defendant cannot give in evidence a parol or verbal agreement, entered into when the note was made, that it should be renewed when it became due.

Indorsement
of a Note.

When a promissory note is indorsed, its resemblance to a bill of exchange begins, for then it is an order by the indorser upon the maker of the note, to pay to the indorsee; the indorser is, as it were, the drawer, the maker of the note, the acceptor, and the indorsee, the payee. From this resemblance it follows, that nearly all the rules which are applicable to bills of exchange, hold also in the case of promissory notes. 1 *Selu. N. P.* 391—2. *Ch. on Bills, &c.* 83.

Statute against
Usury.

By the Statute of the 10 G. 3, c. 5. 1 V. 160, "All bonds, contracts, and assurances whatsoever, for payment of any principal, or money to be lent, or covenanted to be performed, upon or for any usury, whereupon, or whereby, there shall be reserved or taken above the rate of six pounds in the hundred, for a year, shall be utterly void." *Perpetual.*

By virtue of this clause, every note of hand, order, or bill, whereon more than the aforesaid rate of interest is expressed and reserved, is altogether void.

2. Orders or Inland Bills.

It may here be first observed, that all the foregoing rules concerning promissory notes, with regard to consideration,—signatures, and proof thereof,—competency of witnesses,—indorsement,—notice of non-payment,—alteration of dates, &c., fraud and usury, apply and govern equally in the case of orders or bills. A repetition of such rules is therefore unnecessary.

It will be useful, however, to mention some points, which exclusively, or in a more especial manner, relate to the orders or bills here treated of.

Such bill, is a written order from A. to B., directing B., (who has, or is supposed to have in his hands, sufficient effects belonging to A.,) to pay a sum of money to C. or order, or to C. or bearer, either at sight, or at certain number of days after sight, or after date, or on demand. The person making the bill is called the *drawer*, the person to whom it is directed, the *drawee*, and the person in whose favour it is made, the *payee*. When the drawee has undertaken to pay the bill, he is styled the *acceptor*, and his undertaking to pay it, is called an *acceptance*.

Nature of an Inland Bill.

Bills payable to order, are assignable by indorsement. The person making an indorsement, is called the *indorser*, the person in whose favour it is made, the *indorsee*, and the party in possession of the bill, and entitled to receive its contents, the *holder*.

Bills payable to bearer, are transferable by delivery, without indorsement.

An infant cannot bind himself by an order drawn in the course of trade, or even for necessaries. But infancy is a personal privilege. Hence the drawer of an order cannot set up the infancy of the payee and indorser, as a defence to an action. [NOTE. The infant may be sued for the necessaries, though not on the order.]

Infant, party to a Bill.

If a bill is drawn upon a firm, and one of the partners accept it in his own name, this acceptance binds the partnership.

Partners.

It is not essentially necessary to insert in a bill, the words,—“value received.”

The indorsement of a bill which does not contain the words,—“or order,” will not make him that drew the bill chargeable to the person to whom it is indorsed, but the indorser is chargeable to such person.

Words, “or Order.”

If an usurious security be given for a legal subsisting debt, although the security is void, the debt is not extinguished.

Usurious Security.

Where a bill is partly given for an illegal consideration, the whole bill is void.

Due diligence must be used, and care taken, that a bill be presented for acceptance or payment, within a reasonable time. This point of due diligence, must depend upon facts, such as, the situation of the parties, their places of abode, and the facility of communication between them.

A bill may be accepted, by subscribing the name, or only writing thereon the word,—“Accepted.” or a promise to accept, written in a letter, or even a verbal acceptance will be sufficient. An acceptance after the day on which the money is to be paid, is binding.

Acceptance.

Notice of non-acceptance.

If a bill is refused acceptance, notice of such refusal should be given to the drawer in a reasonable time, by the holder, otherwise the drawer will be discharged, if he had effects in the hands of the drawee, but not if he had no effects in his hands. A subsequent promise of payment, will, however, in all cases, make a drawer or indorser liable, being a waiver of the objection for want of notice.

Notice of non-payment.

Where the holder of a bill intends to sue any of the indorsers, it is incumbent on him first to demand payment from the acceptor, and in case of refusal, to give due notice thereof within a reasonable time, to the indorser.

If the holder of a bill enter into a composition with the acceptor, he thereby discharges the indorser.

Receiving part payment.

Receipt of part of the money from an acceptor, will not discharge the drawer, if timely notice be given to him, that the bill is not duly paid. 1 *Selv. N. P.* 297 to 370.

Evidence.

Proving handwriting.

In an action by the indorsee of a bill against the acceptor, it is not necessary for the plaintiff to prove the hand writing of the drawer, for when a bill is presented for acceptance, the acceptor is supposed to look at the hand writing of the drawer, and on that account he is precluded from disputing it afterwards. But the hand writing of the first indorser must be proved in such action.

When Acceptor is a Witness.

In an action by the holder of a bill against the drawer, the acceptor is a competent witness to prove that the drawer had not any effects in his hands, and thereby to relieve the holder from the necessity of proving notice of dishonour.

When Indorser is a Witness.

In an action by the indorsee against the drawer, the payee and indorser is a competent witness to prove that the defendant had acknowledged his liability, and promised to pay the bill. *Selv. N. P.* 370—3.

[NOTE. Although in all the foregoing rules and decisions, the word, "bill" is used, they are to be understood fully to relate and apply to the instrument or paper, in this country usually called an "order," or a "draft," which, when it is for the payment of money only, and payable to any person, "or order," is in fact, and in law, an inland bill of exchange.]

3. *Goods Sold and Delivered.*

Selling Goods on a Credit.

If goods are sold on a credit agreed upon, the price of them cannot be recovered in an action, until the time of credit

has expired, Care must be taken to distinguish cases of this kind, from cases in which goods are sold, and a bill or order taken in payment, payable at a future day, but *without any express agreement for time*, for the payment of the goods; in this last mentioned case, if the bill is refused acceptance, the debtor may be sued immediately for the price of the goods, without any regard being had to the time which would elapse before the bill would become due, for there being no agreement as to time, the party takes the bill as payment, and therefore if it turn out to be good for nothing, the creditor has not received that which which the other undertook to give him, and therefore he may sue the debtor immediately.

A debtor is not discharged by giving a check [or order] which produces nothing.

Where a party agrees to deliver a certain quantity of any article, at a certain time, and delivers a part only before such time, he cannot immediately sue for such part, for the contract being entire, cannot be split, and therefore the party cannot sue and recover until the whole quantity is delivered, or until the time for delivering the whole has arrived.

A party can sue and recover as for goods sold and delivered, where his goods have been obtained by the defendant, by fraud.

If a man deliver goods to another by his order, without expressly agreeing for the price, the seller shall recover for the real value of the goods. [The Justice must determine this value, if the parties cannot agree on it.]

A delivery of goods to a third person, by order of the buyer, is a delivery to the buyer, and the buyer may be sued, as for goods sold and delivered to himself.

A delivery to a servant who has been employed by his master to take up goods for him on credit, will make the master answerable for goods subsequently supplied, although he may have given his servant money for payment, which the servant neglected to pay. But if he has not been employed in any instance to buy on credit, and has always received money beforehand, to pay as he bought, the master will not be answerable.

A delivery also to a carrier appointed by the defendant, or if none has been appointed, according to the most usual and convenient mode, will entitle the plaintiff to recover, although there is no proof of the goods having come into the defendant's possession. 1 *Selv. N. P.* 73-4. 2 *Phillips on Ev.* 124.

Delivering
part of Goods
under a Con-
tract.

Goods obtain-
ed by Fraud.

Price of goods
not named.

Delivery of
Goods.

Evidence.

Who cannot
be a Witness
to prove de-
livery of goods

IN an action for goods delivered by the defendant's order to a third person, that person is not a competent witness to prove the credit given to the defendant.

If the plaintiff has proved a sale of goods to the defendant and another person, that person cannot be a witness to prove that the goods were sold to himself alone, and that the defendant was only concerned as his servant.

Proving bad
quality of
Goods.

A defendant will be allowed in answer to the whole demand, or in abatement of it, to give evidence of the bad quality of the articles supplied, unless he has precluded himself from such a defence, by neglecting to give to the seller a reasonable notice of their inferiority; and this evidence will be admitted, whether the goods have been sold at a stipulated price or otherwise. 2 *Phill. on Ev.* 124—5.

Book of Ac-
counts.

A man's book of accounts is no evidence for him, though it may be against him; for it cannot be better evidence than his own testimony, which cannot be admitted. 1 *Espin. N. P.* 142.

4. *Work and Services.*

Special agree-
ment.

WITH respect to debts for work and labour, or other personal services, it is a rule, that however special the agreement was, yet if it was not under seal, and the terms of it have been performed on the plaintiff's part, and the remuneration was to be in money, the plaintiff may recover by suing in a general form for work and labour; and in some cases, though the original agreement be not performed by the plaintiff, yet if the defendant has derived any benefit from the part performance, he may be sued in such general form, and be compelled to pay whatever sum such part performance is worth.

Work, vary-
ing from ori-
ginal Agree-
ment.

It frequently happens that the work which is the subject of a contract, is enlarged, or some alterations are made in the plan, with the consent of the contracting parties; the true principle with respect to such alterations appears to be, that the contract is to be used as the measure of payment, so far as it has been acted upon by the parties, and that all the work out of the contract, is to be paid for according to the usual rate of charging; in other words, the plaintiff is to be paid up to the extent of the estimate, according to the estimated prices; and beyond the estimate, he is to be compensated to the amount which in justice he ought to receive. And if the plan specified in the contract, has been so entirely abandoned by the parties, that it is impossible to trace the contract, or to ascertain to

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what part of the work it can be applied, in such case the workman will be permitted to charge for the whole work, by measure and value, as if no contract had existed.

A master may sue a person who has enticed away or harboured his apprentice, for the work and labour of such apprentice.

Suing for Work of an Apprentice.

A plaintiff may recover against a defendant, for work done for a third person, at the defendant's request. 1 *Ch. on Pl.* 88, 303. 2 *Phil. on Ev.* 123.

Work done for a third person.

A master may discharge his servant at a moment's warning, for misconduct, (for instance, for being absent when wanted, sleeping from home at night without his master's leave, &c.) and in such case, the servant will only be entitled to such wages as are due at the time of his discharge. But if the servant has not been guilty of misconduct, and the master discharges him without warning, the servant in that case will be entitled to a month's wages beyond the wages due for the period of actual service. 2 *Selv. N. P.* 1064.

Wages of a Servant, when Discharged for misbehaviour, and when otherwise.

If a servant, hired for a year, wilfully refuse to obey his master's orders, the master is justified in dismissing him before the end of the year, and the servant cannot recover any wages for the time he has served. 5 *Burn's*, 160. 2 *Stark, N. P.* 256.

Servant refusing to obey Orders.

In an action to recover for work and labour done, the defendant will be at liberty to prove the badness of the work, or that it was executed in such a manner as to be of no value to him, or not of the value charged. 2 *Phill. on Ev.* 125.

5. Money paid and expended.

WHERE a person has laid out his own money for the use of another, either with the express or implied consent of such other person, the law implies a promise of re-payment, and it can be recovered as a debt, in an action.

Payment by a Surety.

As where one person is surety for another, and compellable to pay the whole debt, and such surety is called upon and pays, it is money paid to the use of the principal debtor; and may be recovered against him in an action for money paid, even though the surety did not pay the debt by the desire of the principal.

So where two persons are sureties for another, and the obligee compels one of the sureties to pay the whole debt, such surety may maintain an action against his co-surety, and thereby compel him to contribute his proportion towards the payment of the debt. In such case it does not appear to be necessary that the insolvency of the principal debtor should be proved.

But where one of two sureties has been prevailed on to become a surety at the instance of the other, and such other has been compelled to pay the debt, he cannot oblige his co-surety to pay a contribution.

Bail paying
for their prin-
cipal.

Bail may sue their principal, as for money paid for him, for the recovery of such sums as they, from their situation as bail, and in order to secure themselves, have been fairly and necessarily obliged to expend.

Consent of
party, for
whom Money
is paid.

It is observable, that the mere circumstance of one person having received an advantage from the payment of money by another, is not sufficient to raise a ground of action against the former; the consent of the party, either express or implied, is essentially necessary to the support of an action to recover such money.

An officer, guilty of a breach of duty, cannot recover money which he has paid in consequence of it, though for the benefit of the defendant.

Contribution
in the case of
Joint Parties.

If A. recover in an action founded on a trespass or wrong against B. and C., and levy the whole damages on B., B. cannot maintain an action against C. for a reimbursement of a moiety; for a contribution cannot be claimed as between joint wrong doers.

A different rule holds in the case of a joint judgment against several defendants, in an action on a promise. In such case, if one defendant has been compelled to pay the whole amount, or more than his proportion of the judgment, he may recover from the other defendant his proportionate part.

Illegal trans-
action.

In the case of an *illegal* transaction, if one partner pay money for another, *without an express authority*, he cannot recover it back in an action against the other. 3 T. R. 418.

6. Money had and received.

An action to recover money had and received, to the use of, or belonging to the plaintiff, is founded on all the equitable circumstances of the case between the parties, and consequently, in order to recover in such action, the plaintiff must shew that he has equity and conscience on his side.

Money un-
justly receiv-
ed.

If I pay money to a person who claims an authority to receive it, but really has not any such authority, and afterwards I am compelled to pay it again to the person lawfully entitled to receive it, an action will lie against the person unjustly receiving the money, to recover it back.

Money paid
under mistake

Where money, to which there was not any ground of claim in conscience, has been paid under a mistake, the party may recover it back again.

Where a party has been sued for a sum he had before paid, and for which he had obtained a receipt, but not being able to find it, and not having any other proof of payment, he has been obliged to submit in the action, and pay the money again, if he afterwards find the receipt, still he cannot recover back the money, the payment of which was so wrongfully enforced; because it was recovered *by process of law*, and there must be an end of litigation.

Money recovered by a Judgment.

Where a party pays money to another, voluntarily, with full knowledge, or full means of knowledge of all the facts of the case, the party so paying cannot recover it back again, on account of his ignorance of the law. But where a payment has been made, not with full knowledge of the facts, but only under a blind suspicion of the case, and it is found to have been paid unjustly, the party paying may recover it back again.

Voluntary payment.

Money due in point of honour or conscience, though a person is not compellable to pay it, yet if paid, shall not be recovered back.

Money due in conscience.

Where money has been paid without consideration, or on a consideration which fails, an action will lie for the recovery of it.

No consideration.

If an undue advantage be taken of a person's situation, and money obtained from him by compulsion, such money may be recovered in an action.

Money obtained by compulsion.

Where money is paid, and the thing contracted for not delivered, it is money had and received to the use of the party who paid it, and he may recover it back.

Payment and no delivery, &c.

It is a general rule, that in cases of payment to a known agent, the action for money had and received ought to be brought against the principal.

Agent.

Where money has been paid by one of two parties to an illegal transaction, to a third person, for the use of the other party, an action will lie against such third person, by the party for whose use it was paid, to recover the money.

Payments on illegal transactions.

If A. agree to give B. money for doing an illegal act, B. cannot, (although he do the act,) recover the money by an action, yet if the money be paid, A. cannot recover it back again.

7. *Necessaries furnished,—Freight,—Awards,—and other grounds of Action.*

[For necessaries furnished for the use of any person, such as meat, lodging, &c. by an inn keeper, or any other, to a traveller, boarder, or other person,—medicines to a sick per-

son,—wearing apparel, and in all other like cases, where parties are of full age and capable of contracting, actions may be brought before a Justice or Justices, the same as for the recovery of other debts, where the whole dealing or cause of action does not exceed £10 ; and in such cases the same general rules of law and evidence will apply as in actions for the recovery of other debts.]

Infant.

An infant, or person under twenty-one years may be sued and obliged to pay for necessities furnished to him, such as necessary meat, drink, apparel, proper instruction, medicines, and the like. And even if goods, not necessities, are delivered to such infant, and after full age he ratifies the contract by a promise to pay, he is bound.

Necessaries for such infant's wife or child, are considered the same as necessities for him.

If an infant is living under the roof of his parent, who provides every thing which in his judgment appears to be proper, the infant cannot bind himself to a stranger, even for such articles as might under other circumstances be deemed necessities.

Goods supplied to an infant to trade with, cannot be recovered for, as necessities. 1 *Selv. N. P.* 122—7.

Husband and
Wife.

While husband and wife are living together, the husband is liable to pay for necessities, suitable to his degree and estate, furnished to his wife, and the misconduct or even adultery of the wife, during that period, will not discharge him from such liability. The law is the same where the husband deserts his wife, or turns her away without any reasonable ground, or compels her by ill usage or severity to leave him, in all which cases he gives the wife a general credit. And in such cases he will be liable, though he advertises her, and cautions all persons not to trust her, or even if he give particular notice to individuals, not to give her credit.

But if husband and wife are living together, and any particular person is warned not to give her credit, and such person afterwards furnish her with apparel, even of a suitable description, the husband is not liable to pay for it.

Also, if the wife elope from her husband, and live in adultery, the husband cannot be charged by her contracts.

So if a woman elopes from her husband, though she does not go away with an adulterer, or in an adulterous manner, any person trusts her at his peril, and the husband is not bound.

If a man cohabits with a woman to whom he is not married, and permits her to assume his name, and appear to the world as his wife, and in that character to contract debts for necessities, he will be liable, although the creditor knew of her real situation. 1 *Selv. N. P.* 270—8.

The owners of a ship are liable for necessaries furnished for it, by order of the master, though they were furnished without the knowledge of the owners, or without their being known to the persons who supplied them. *Coup. R.* 636.

Necessaries
for use of a
Ship.

A master is not liable to pay for medical attendance on a servant who has met with an accident in his service, unless he has expressly undertaken and promised to do so. *2 Bos. & Pul.* 247.

Medical at-
tendance on a
Servant.

For the freight of goods, the owner of the vessel may sue and recover, or the master may sustain an action for such freight in his own name, where the contract was in terms made with him.

Freight.

The person who consigns goods may be primarily liable for the freight, but the consignee or purchaser, if he accept the goods in pursuance of the usual bill of lading, may be sued for the freight, unless it be known to the master of the vessel that he acted only as agent for the person who consigned the goods. *1 Ch. on P.* 5. 37.

A submission of all matters in difference between parties, to the award of arbitrators, may be made without writing.

Arbitration
and Award.

An award regularly made by an arbitrator, to whom matters in difference are referred, is conclusive in an action at law, upon the parties to the reference, as to all the matters enquired into, within the submission.

In an action to recover a sum awarded, it will be necessary to prove both the submission and the execution of the award.

It is not necessary for the plaintiff to prove that the defendant had notice of the award, the fact of the making of the award, being as much within the knowledge of the one party as the other, unless it is expressly provided that the award should be notified to the parties, in which case the notice must appear to have been regularly given. Nor is proof of a demand of payment necessary, except where the payment is of a collateral sum, upon request. *2 Phill. on Ev.* 111.

Actions may also be brought before Justices, to recover for money lent, and for the use or hire of goods, or personal property of any kind, for the pasturage or keeping of horses or other cattle, and in various other instances, where the debt does not concern or relate to the title to land, and is not in the nature of damages arising from the non performance of any covenant or special agreement, but is of the nature of a simple debt. Also, by several Statutes of the Province, certain fines and penalties, and other sums, are directed to be recovered before a Justice or Justices, in the same manner as debts between party and party. In all such instances therefore, the

Other cases in
which Actions
may be
brought be-
fore Justices.

like Forms must be used, and the like course of proceedings be observed, and the same general rules of law and evidence will apply, as in the case of such private debts.

8. *Account Stated.*

WHERE a plaintiff sues to recover the balance of an account stated and settled between him and the defendant, he will not be obliged to give evidence of the several items constituting the account, but only that an account was stated. Proof of an acknowledgment by the defendant, of a debt due upon any account, or of an admission of a debt upon a single article, will be sufficient to enable the plaintiff to recover. On the other hand it will be open to the defendant to dispute the charges on the several items, for although an account stated, strictly speaking, is an agreement by both parties, that all the articles are true, and formerly this was held to be conclusive, yet a greater latitude has of late prevailed, in order to remedy the errors which may have crept into the account in overcharging the items. 1 *Selv. N. P.* 71-2. *Phill. on Ev.* 128.

Infant.

An infant or person under twenty one years, cannot bind himself by an account stated. 1 *Selv. N. P.* 129.

A party can only recover upon the ground of an account stated, when a certain and precise sum is admitted as due, and where a debt is actually in existence. 1 *Chitt. on P.* 308.

9. *Statute of Frauds.*

By the 32 G. 2, c. 18. 1 V. 25, No action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages of another person, or to charge any person upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised. *Perpetual.*

Question, as to original credit.

Where the question is, respecting the debt of another person, the true consideration is, whether the credit was originally given to the defendant alone, or whether the third person was liable as the debtor, and the defendant only guaranteed or became surety for the payment. The latter case is within the Statute and void, the established rule being, that if the person for whose use the goods are furnished, is liable at all,

any other promise by a third person to pay that debt must be in writing; but in the former case, namely, where the debt is exclusively the debt of the defendant, a written memorandum will not be necessary. As for example, suppose a man comes with another into a shop to buy, and the shopkeeper should say, "I will not sell him the goods, unless you will undertake that he shall pay me for them," and the other promises to that effect, such a promise is within the Statute, and the party is not liable upon it; but if a party is originally liable to pay for the goods, as if he sends an order to another, requesting him to deliver goods to I. S. and that he, (the party sending the order) will pay him the amount, here, the credit is given to such party alone, and not to I. S., and consequently such party is liable for the payment.

Where a plaintiff had delivered goods to one I. S., in consequence of a verbal promise by the defendant in these words, "I will pay you, if I. S. will not," (which undertaking was before the delivery of the goods,) and it appeared further, that I. S. had been entered as the debtor in the plaintiff's books, the Court was of opinion that the case was clearly within the Statute, and the defendant was not liable upon such promise, for the credit in the first instance was given to I. S.

Verbal and collateral promise.

There is no distinction between a promise to pay for goods furnished for the use of another, made *before* they are delivered, and one made *after*. In both cases, if the credit is in any degree given to him, or he is at all liable, any promise, not in writing, made by a third person, relative to payment, is within the Statute, and such person is not liable on it.

A promise in these words, "If you do not know him, you know me, and I will see you paid," not being in writing, is void by the Statute, and the party cannot be made liable to payment.

Also this promise,—“You must supply my mother-in-law with bread, and I will see you paid,” is not binding, but void by the Statute.

A promise to pay money due from J. S., in consideration that the plaintiff would not sue J. S. for the debt, or that he would stay the suit, if already commenced against him, is clearly within the Statute, and cannot be made the subject of an action, without proof of a written promise to that effect. So a promise to pay damages which the plaintiff had sustained from an injury done to his horse, by a third person, in consideration that the plaintiff would not sue that person, has been held to be a collateral promise, and not binding without a written memorandum.

Promise, on forbearance to sue.

But if the plaintiff were to commence a suit against J. S.,

Promise on condition to discontinue a suit.

not for the recovery of a debt, but for some other cause, (as for an assault, &c.) and the defendant, in consideration that the plaintiff would discontinue his suit, promise to pay a sum of money, together with the plaintiff's costs, this would not be a void promise, but the party could be compelled to make the payment, for this is not a promise to answer for the debt, default, or miscarriage of J. S. within the meaning of the Statute; for the cause not being tried, J. S. does not appear to have been guilty of any default, or miscarriage, or to be liable to the particular debt, damage, or costs.

Promise, when under a legal obligation.

A verbal promise by the defendant, to pay the plaintiff for his having provided necessities for a third person, will be binding, where the defendant was under a legal obligation to provide them, as where a medical man was called in to attend upon a pauper, without the previous request of the overseers, any one of them afterwards verbally promised payment, he was held liable; for the overseers were under a legal obligation to provide such relief for the pauper. But if a party is not under any such obligation of law, he will not be bound by any such promise, unless it is in writing.

Consideration of promise.

In order to make a party liable, upon any promise to answer for another, even where it is in writing, there must be a good consideration for such promise. 2 *Schw. N. P.* 808 to 817. 2 *T. R.* 80. 2. *Phill. on Ev.* 72—6.

Agreements not to be performed within a year.

The clause of the Statute relating to agreements, not to be performed within a year, applies to those cases only, where by the express agreement between the parties, the thing is not to be performed, that is, completed within the period of a year.

Cases depending upon contingencies, which may or may not happen in the course of a year from the time of making the agreement, are not within the Statute, and consequently, in a case of that kind, a party may be liable on his promise. 2 *Phill. on Ev.* 79.

Directions.

In here closing this division relating to the grounds of the plaintiff's action, it may be well to observe, that in general, at the least, the several before mentioned legal objections or defences to such actions, such as,—the improper or non-joinder of parties,—the Statute of limitations,—infancy,—the Statute of frauds relating to promises, and other like objections, are to be made or brought forward in the first instance, by or on behalf of the defendant, and that it does not seem to be the duty of the Justices to state and give effect to any such legal objection or defence, where a defendant does not bring it forward, or deny the debt, but admits it to be due. The same obser-

vation will in general equally apply to similar legal objections to the set-off, or other defence of the defendant.

VI. THE DEFENDANT'S SET-OFF.

By the general Act, "for the Summary Trial of Actions," already set forth, it is provided, that the Justices "shall allow the defendant to produce his account against the plaintiff, or any receipt or other discharges for payment made; either in whole or in part."

And by the 3 W. 4, c. 58. 4 V. 236, "Where there are mutual debts between the plaintiff and defendant, in any action commenced in any Court, or before any Justice of the Peace, or if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate, and either party, one debt may be set against the other, and such matter may be given in evidence upon the general issue, or pleaded in bar, as the nature of the case shall require, so as at the time of pleading the general issue, notice be given of the particular sum intended to be set off, and on what account it became due. Mutual debts.

Sec. 2. Mutual debts may be set against each other, and given in evidence, although they are deemed in law to be of a different nature, unless in cases where either of such debts accrues by reason of a penalty contained in any bond or specialty, in all which cases the debt intended to be set off shall be pleaded, in which plea shall be shown how much is justly due on either side, and in case the plaintiff shall recover in any such action, judgment shall be entered for no more than shall appear to be justly due to him, after one debt being set against another as aforesaid."

Sec. 3. If upon trial of the issue between the parties, before any Court, or Justice of the Peace, the said Court, or the Jury, or such Justice of the Peace, shall not assess damage to the plaintiff, beyond the debt or sum which shall have been so pleaded, or of which notice of set-off shall have been given as aforesaid, then the plaintiff shall have no costs, but shall pay costs to the defendant, to be taxed as in other cases; and if upon such trial, it shall appear that the sum due by the plaintiff to the defendant, exceeds the sum due by the defendant to the plaintiff, judgment shall be given for the defendant, for such sum as the plaintiff shall be found to be indebted to the defendant over and beyond the sum due by the defendant to the plaintiff; and the defendant may sue out execution for the sum for which judgment was so given in his favour, together with costs of the action, in the same manner as he might

heretofore have done, in cases where judgment was given for him for costs only. *Perpetual*. [But see Sec. 9 of the before recited Act of the 7 W. 4, c. 60. Sess. 1837, which prohibits judgment being given for any sum in favour of a defendant, where the whole amount of the set-off produced exceeds the amount over which the Justice or Justices have jurisdiction.]

Notwithstanding this Statute, the debts sued for, and the debts intended to be set off, must be mutual, and due in the same right. Hence a joint debt cannot be set against a separate demand, nor a separate debt against a joint demand, but a debt due to the defendant as surviving partner, may be set against a demand on defendant in his own right.

A debt barred by the Statute of limitations cannot be set off, and if it be given in evidence on a trial, it may be objected to by the plaintiff, on that ground. 1 *Selv. N. P.* 149.

VII. OF JUDGMENTS, AND THE PROCEEDINGS ATTENDING AND FOLLOWING THE SAME, AND HEREIN,—OF APPEALS.

ALL the evidence adduced in the action being closed, and the Justice having duly considered the case, should openly declare his judgment, so that both parties may be apprised of it. He should then tax and allow the costs, and inform the party against whom judgment is given, (if he is present) of the whole amount of the debt and costs to be paid by him. It has already been seen by the Statutes relating to mutual debts, set forth under the preceding division, that in cases where the whole amount of the set off produced shall not exceed the amount over which the Justice or Justices have jurisdiction, if it shall appear that there is a balance due to the defendant, judgment for the same, with costs, may be given in his favour, in the same manner as if he had brought an action to recover it. The Justice should, in every case, file and preserve as a record, the original writ returned to him, and mark thereon the respective sums of debt and costs for which judgment has been given, and also the date of the judgment.

The following are the fees established and allowed in summary causes before Justices, by the before recited Act of the 3 G. 4, c. 30. 3 V. 134.

Justice's Fees.

On Writ of Summons,—two shillings.

On Capias and Affidavit,—two shillings and sixpence.

SUMMARY TRIALS.

527

On Judgment,—One Shilling.
On Execution,—One Shilling.
Subpoena,—One Shilling.

Constable's Fees.

Service,—One Shilling.
Travel,—Three-pence per Mile.

Witnesses.

EACH,—Two Shillings and Sixpence ; and travel,—three-pence per mile.

The fees for the travel of Constable should be calculated from the place of residence of the Justice, to where the writ is served on the defendant ; and the fees for the travel of the witness should be allowed for the whole distance he travels from his home to attend the trial, and in returning.

If the judgment is in favour of the defendant, the only costs to be taxed and allowed for him, are, the one shilling for the judgment, and the fees of the witnesses on his part. The fees for the writ, and to the constable, must be paid by the plaintiff, and are not to be made any part of the defendant's judgment, as he has nothing to do with the payment of these fees. For the additional fees, where there is a Jury, see the before recited Act of the 7 W. 4, c. 60, under Division 1.

It has been already observed, that if either party desires an appeal, the proper time to make it, is, on the giving of the judgment, but as nothing on this point is mentioned or intimated in the Act, it would seem that a party may make such appeal at any future period. There can be no appeal, however, unless the debt or cause of action amounts to twenty shillings or upwards. At the first view, it may seem quite doubtful, whether these words of the Act, "debt or cause of action," refer to the original demand of the plaintiff, or to the sum ascertained and stated as the debt on the judgment, and as contradistinguished from the costs. If the former is to be understood, then an appeal should be granted in a case where such original debt or cause of action amounts to twenty shillings, although the debt awarded by the Justice may be a less sum. It would rather appear, however, that it is not intended by the Act that an appeal shall be granted, unless the debt really due, as found by the Justice, amounts to twenty shillings, as the words of limitation in the first part of the clause, are, "whole dealing and cause of action," and in the latter part

Appeal.

respecting the appeal, the word "debt" is used, which expression seems to refer to the sum found by the Justice to be actually due, as such sum is, in truth, the only real "cause of action."

Concerning
Security on
Appealing.

It may also be observed, that the Act does not contain a word as to the party appealing giving any bond or security to prosecute the same, or respond the final judgment. A former and expired Act, directing such Summary Trials, contained a clause expressly requiring such security on appeals, but as it is omitted in the present Act, nearly all the other provisions of which appear to have been almost literally copied from such former Act, it would seem, that the Legislature intended that such security should no longer be requisite. Notwithstanding, therefore, it is the usual practice to require and take such bond or security, yet it seems quite clear that the party appealing cannot legally be *compelled* to give the same, but is entitled to his appeal without it.

By Sec. 10 of the 7 W. 4, c. 60, recited under the first Division, before the appeal is allowed, the party must make affidavit that he is dissatisfied with the judgment, and feels aggrieved thereby.

Taking out
Execution.

If there be no appeal, the party in whose favour judgment has been given, may take out his execution immediately, or at any time thereafter. In the case of an appeal, the Justice, before, or at the next term of the Court to which the appeal is made, should send in to the Clerk of such Court, the writ, and all the other papers in the cause, which remain in his hands. After an appeal, no execution can be issued, or further proceedings take place on the judgment, until after the first term of the Court to which such appeal has been made, and where the determination thereof is postponed by the direction of such Court, then the execution cannot be taken out, until such determination, or until the issuing thereof is otherwise by law permitted.

For the Form of the Execution, see the first division of the Title.

Execution after
Appeal.

With regard to issuing an execution after an appeal, it is provided by the second clause of the Act of the 5 W. 4, c. 2. 4 V. 354, that, "When an appeal shall have been had against any judgment or conviction, on either a civil or criminal case, and no proceeding therein be had during the next ensuing Term of the Court appealed to, either by entry of the cause there, or otherwise, it shall and may be lawful for the Justice or Justices, having given such judgment, or ordered such conviction, to issue his or their execution or warrant against the party so having appealed, in the same manner as if no such appeal had been taken." *Perpetual.*

It is proper to recite here, certain enactments relating to the levying of writs of execution. By the 57 G. 3, c. 25. 3. V. 21,—It shall not be lawful for the sheriff or his deputy, or coroner, or other officer, to attach or take upon any writ of mesne process, or execution, the necessary wearing apparel or bedding of any person or persons, or of their children, against whom such writ shall be issued, nor the tools or implements of his trade, of any mechanic, necessary for his, and ordinarily used by such mechanic in his trade and business; nor the cow of any person, unless he or she shall have more than one, in which case it shall be lawful to attach or take all over and above one. *Perpetual.*

By the 4 and 5 G. 4, c. 7. 3 V. 182,—It shall not be lawful to take under, and by virtue of any writ of attachment, execution, or other process, (except for rent,) the grain, hay, potatoes, or other article growing in the ground, before the same shall be severed from the ground. *Temporary.*

The Statute and proceedings relative to the examination and discharge of insolvent debtors, confined on writs of execution issued by Justices of the Peace, will be found under the Title,—Insolvent Debtors.

What Goods shall not be taken on an Execution.

SUMMONS.

IN all legal proceedings the person complained of ought to have notice of the charge laid against him, and to have an opportunity of being heard in his own defence. Consequently, where a person is accused before the Justices, they ought to summon him to appear, or issue their warrant to bring him before them. The manner of conveying the parties is sometimes directed by the Statutes creating the respective offences, which therefore ought to be pursued accordingly. In other cases, where it is left discretionary in the Justices, it seems most agreeable to the mildness of our laws, to put the party to no more inconvenience than the occasion makes unavoidable; and therefore, where the case will bear it, a summons seems more apposite than a compulsory process. But in cases of sureties of the peace, petty larcenies, and other felonies, and generally, where the King is party, and also in cases between party and party, where the body of the offender is liable, a warrant is the regular process, and not a summons.

In the summons it is usual, and upon many accounts convenient, to fix not only a day, but a particular time of the day, for the appearance of the party; but if he shall appear at

Where a Summons is proper.

Person Sum-
moned must
wait.

the time, and the Justice shall not attend, he is not to go away, but must wait during the remaining part of the day, for many things may happen to hinder the immediate attendance of the Justice.

Service of
Summons.

It has been made a question in some cases, whether the service of the summons must be *personal*. It seems in general necessary that it should be so, unless where personal service is expressly dispensed with by the Statute. The provisions, specially introduced into many Acts of Parliament, to make a service at the dwelling house sufficient, seem to justify the inference that the law in other cases is understood to require a service upon the person. 5 *Burn's*, 282.

[NOTE. In the case of summary trials before Justices for the recovery of debts, it would seem from the terms of the general Statute on the subject, that a personal service on the defendant is requisite.

The summons should be served at least three full days before the day for the appearance of the party.]

General Form of a Summons.

County of } To A. C., one of the Constables of the
} township of — in the said county.

[Seal.]

WHEREAS information and complaint hath been made before me, A. M., Esquire, one of His Majesty's Justices of the Peace for the said county, that A. O. of — in the county aforesaid, labourer, on the — day of —, now last past, at — in the county aforesaid, did—[here set forth the offence, precisely as charged in the information.] These are therefore to require you, forthwith to summon the said A. O. to appear before me at — in the said county, on —, the — day of —, at the hour of — in the forenoon of the same day, to answer to the said information and complaint, and to be further dealt with according to law. And be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord —.

A. M., J. P.

The Form of a summons for a witness will be found under the Title,—Witnesses.



SUPERVISORS, see PUBLIC GROUNDS.

SURETY FOR THE PEACE AND GOOD BEHAVIOUR.

SURETY for the peace is the acknowledging of a recognisance or bond to the King, taken by a competent Judge of record, for keeping the peace. And this Surety every Justice of the Peace may take and command as a Judge, and by virtue of his office, derived from his commission. *5 Burn's*, 283.

On this subject will here be shewn,—

- I. FOR WHAT CAUSE SURETY OF THE PEACE SHALL BE GRANTED.
- II. AT WHOSE REQUEST, AND AGAINST WHOM IT SHALL BE GRANTED.
- III. IN WHAT MANNER IT SHALL BE GRANTED.
- IV. HOW THE PEACE WARRANT SHALL BE EXECUTED.
- V. OF THE RECOGNISANCE FOR THE PEACE.

I. FOR WHAT CAUSE SURETY OF THE PEACE SHALL BE GRANTED.

By the Commission of the Peace, Justices of Peace have power “to cause to come before them, or any one of them, all those, who to any of the King’s people, concerning their bodies, or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour towards the King and his people, and if they shall refuse to find such security, to cause them in the King’s prisons to be safely kept, until they shall find such security.”

Upon which it has been observed, that it seems clear, that wherever a person has just cause to fear that another will burn his house, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person, and that every Justice of the Peace is bound to grant it, upon the party’s giving him satisfaction upon oath, that he is actually under such fear, and that he has just cause to be so, by reason of the other’s having threatened to beat him, or laid in wait for that purpose ; and that he doth not require it out of malice or for vexation.

Fear of corporal hurt, or burning house.

It seems also the better opinion, that he who is threatened to be *imprisoned* by another, has a right to demand the surety of the peace ; for every unlawful imprisonment is an assault and wrong to the person of a man.

Threat of imprisonment.

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OUNDS.

And although the fact from which the fear arises, be pardoned, the Court will receive it as a ground upon which to grant the security.

Demanded
through ma-
lice or vexa-
tion.

But if the Justice shall perceive that surety is demanded merely of malice, or for vexation only, without any just cause or fear, it seems he may safely deny it.

Also, if a man will require surety of the peace, because he is at *variance* or in *suit* with his neighbour, it shall not be granted.

Fear of harm
to Servants or
Cattle, &c.

Also, it is said to be somewhat clear, that a Justice may not by the Commission award a precept of the peace in behalf of a man, because he fears another will do harm to his *servants*, or *cattle*, or other *goods*.

The reason why a man may not have sureties of the peace against another for that he fears he will do harm to his *servants*, seems to be, because it should be the *servant's* fear in such case, and not the *master's*; and the servant's own oath before the Justice is necessary. And as to his *goods*, it seems clear that no sureties of the peace ought to be granted in that case; for the recognisance of the peace when taken, is only, that the party shall keep the peace towards the King and all his liege people.

Threats of
hurt to a wife
or child.

But Mr. Dalton says, that if a man shall threaten to hurt another's *wife* or *child*, he thinks such person may crave sureties of the peace, by the words of the commission, and that the Justice ought to grant it.

Must be a fear
of present or
future danger.

Note also, the surety of the peace shall not be granted but where there is a fear of some present or future danger, and not merely for a battery or trespass that is past, or for any breach of the peace that is past; for this surety of the peace is only for the security of such as are in fear; but the party wronged may punish the offender by indictment, and the Justice, if he see cause, may bind over the affrayer, to answer unto the indictment. 5 *Burn's*, 284,—5.

Other causes
for requiring
Surety.

A Justice may also bind to the good behaviour, rioters, common breakers of the peace,—such as in the presence and hearing of the Justice misbehave themselves in some outrageous manner of force or fraud, or such as abuse a Justice or constable in executing their offices, or use words of contempt to a Justice at any time. *Id.* 300.

II. AT WHOSE REQUEST, AND AGAINST WHOM, IT SHALL BE GRANTED.

Who may de-
mand sureties.

It seems to be agreed, that all persons whatsoever under the King's protection, being of *sane memory*, whether they be

natural and good subjects, or aliens, or attainted of treason, &c., have a right to demand surety of the peace. And it is certain a wife may demand it against her husband, threatening to beat her outrageously, and that a husband also may have it against his wife. Upon which it is observed, that if the wife in such case cannot find sureties, she shall be committed, and so a man may get rid of a shrew.

An infant under the age of fourteen years may demand this surety, and it shall be granted to him.

Infant under fourteen years. Insane person.

But as to a person of insane memory, this surety shall neither be granted against him nor to him, upon his own request; but yet if there shall be cause the Justice ought to provide for his safety.

There seems to be no doubt but that surety of the peace ought upon a just cause of complaint to be granted by any Justice of the Peace, against any person whomsoever under the degree of nobility, being of sane memory, whether he be a magistrate, or private person, and whether he be of full age, or under age. But persons under the age of twenty-one years, and married women, ought to find security by their friends, and not to be bound themselves. It is said, the fear of one cannot be the fear of another, and therefore every recognisance must be separate. 5 *Burn's*, 285—6.

Against whom sureties shall be granted.

III. IN WHAT MANNER IT SHALL BE GRANTED.

If the person to be bound be in the presence of the Justice, he may be immediately committed unless he offer sureties; and from hence it follows, that he may be commanded by word of mouth to find sureties, and committed for his disobedience; but it is said, that if he be absent, he cannot be committed without a warrant from some Justice, in order to find sureties; and that such warrant ought to be under seal, and to shew the cause for which it is granted, and at whose suit, and that it may be directed to any indifferent person.

Proceedings when party is before the Justice and when he is absent.

A Justice cannot enjoin another to keep the peace under a penalty. Nor commit for not finding security, until the party has been required and refused so to do.

Cannot be enjoined under a penalty.

The articles of the peace must be verified by the *oath* of the exhibitant, an *affirmation* therefore is not sufficient.

Oath requisite.

Affidavits shall not be received on the part of the defendant, to prevent his giving surety.

The Justice may make the warrant to bring the party before himself, or some other Justice, or he may make it to bring the party before himself only.

Warrant to bring up the party.

It is said, that if one who fears that the surety of the peace

Supersedeas
by finding
Sureties be-
fore arrest.

will be demanded against him, find sureties before any Justice of the same county, either before or after a warrant is issued against him, he may have a supersedeas from such Justice, which shall discharge him from arrest from any other Justice, at the suit of the same party for whose security he has given such surety. 5 *Burn's*, 286—8.

IV. HOW THE PEACE WARRANT SHALL BE EXECUTED.

Who shall
execute it.

It can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the Sheriff, who may either by parole, or by precept in writing, authorise an officer sworn and known, to serve it, but cannot empower any other person, without a precept in writing.

Breaking
open doors to
arrest.

Where a person authorised to arrest another, who is sheltered in a house, is desired quietly to enter it, in order to take him, it seems generally to be agreed, that he may justify breaking open the doors, upon a warrant from a Justice of the Peace, to compel a man to find sureties for the peace or good behaviour. But no one can justify breaking open another's doors to make an arrest, unless he first signify to those in the house, the cause of his coming, and request them to give him admittance.

Before whom
the party shall
be carried.

If the warrant specially direct, that the party shall be brought before the Justice who made it, the officer ought not to carry him before any other; but if the warrant be general, to carry him before any Justice of such place, the officer has the election to bring him before what Justice he pleases.

Supersedeas
on surety being
given.

And if the party be carried before another Justice, and not before him who issued the warrant, such other Justice must take the surety, and bind him by recognisance in all points as the form of the precept doth require: and thereupon, such other Justice, having so taken surety of the peace, may and ought upon request to make his *supersedeas* to all officers, and to all other Justices of the same county: and thereby the said party shall be discharged from finding other surety, and from any other arrest from the same cause; but by such supersedeas, the other Justice cannot discharge the warrant of the first Justice, until the party be bound indeed, nor give any other day to the party to appear.

Commitment
on refusal to
find Sureties.

It is the best way, and now the usual practice, to direct the constable in the first instance to take the party before the Justice, who in case of refusal or neglect to find sureties, commits him to prison.

Insufficient
Sureties.

If the Justice was deceived in the sufficiency of the sureties, he, or any other Justice may afterwards compel the party to find and put in other sufficient sureties, and may take a new recognisance for the same.

If the sureties die, the party principal shall not be compelled to find new sureties, because their executors and administrators are liable.

Death of Sureties.

But if a man that was bound to keep the peace, hath broken his bond, the Justices ought, of discretion, to bind him anew. But not until he be thereof convicted by due course of law, for before conviction he stands indifferent whether he hath forfeited his recognisance or not. 5 *Burn's*, 288-9.

Binding anew on breach of recognisance.

V. OF THE RECOGNISANCE FOR THE PEACE.

As to the form of such a recognisance, where it is taken before a Justice upon a complaint below, it seems that it may be regulated by the discretion of such Justice both as to the number and sufficiency of the sureties, and the largeness of the sum, and the continuance of the time for which the party shall be bound. And it hath been said, that a recognisance to keep the peace as to any person, for a year, or for life, or without expressing any certain time, (in which case it shall be intended for life,) or without fixing any time or place for the party's appearance, or without binding him to keep the peace against all the King's people in general, is good. However, it seems, to be the safest way to bind the party to appear at the next Sessions of the Peace, and in the mean time to keep the peace as to the King and all his liege people, especially as to the party, according to the common form of precedents.

Form and force of Recognisance.

But in a recent case it has been determined by the Court of King's Bench, that a Justice of the Peace is authorised to require surety of the Peace for a limited period, (e. g. two years,) according to his discretion, and that he need not bind the party over to the next Sessions only. But if a recognisance to appear at the Sessions be taken, and an order of Court for finding sureties applied for, articles of the peace must be exhibited.

For what time, binding shall be.

The act that shall cause a forfeiture of such recognisance must be done or intended unto the person as is aforesaid, or in terror of the people. Therefore, to enter into lands where he ought to bring his action, or to disseise another of his lands, or to enter into lands or tenements with force, being without offer of violence to any man's person, and without public terror, or to do a trespass in another man's corn or grass, or to take away another man's goods wrongfully, so it be not from his person, or to steal another man's horse or other goods feloniously, being not from his person; all these, and the like are breaches of the peace, and yet these will make no breach of this recognisance, nor breach of the peace within the meaning of the commission of the peace.

Forfeiting Recognisance.

But the recognisance is forfeited if the party make default of appearance, and the same default shall be recorded.

Excuse for
not appearing
at Sessions.

However, if the party have any excuse for his not appearing, it seems that the Sessions are not bound peremptorily to record his default, but may equitably consider of the reasonableness of such excuse.

Forfeiture by
violence.

There is no doubt but that it may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement, as manslaughter, rape, robbery, unlawful imprisonment, and the like.

Unlawful As-
sembly,
threats, &c.

Also it has been holden, that it may be forfeited by any unlawful assembly *in terrorem populi*, and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his presence threatening to beat him.

Otherwise it is, if the party be absent, and yet if the party so bound shall threaten to kill or beat a person who is absent, and after shall lie in wait for him, to kill or beat him, this is a forfeiture of the recognisance.

Cases where
actual Assault
is no Forfeiture.

Also there are some actual assaults on the person of another which do not amount to a forfeiture of such recognisance, as if an officer having a warrant against one who will not suffer himself to be arrested, beat or wound him in the attempt to take him, or if a parent in a reasonable manner chastise his child, or a master his servant, being actually in his service at the time, or a schoolmaster his scholar, or a gaoler his prisoner, or if a man beat one who makes an assault upon his person, or that of his wife, parent, child, or master, or if a man fight with, or beat one who attempts to kill any stranger, or if one imprison those whom he sees fighting, till the heat is over, and many other like cases.

Discharging
Recognisance.

He who is bound to the peace and to appear at a certain day, must appear at that day and record his appearance, although he who craves the peace comes not to desire that it may be continued; otherwise the recognisance cannot be discharged.

The non-appearance of the party at whose complaint the recognisance was taken, in order to pray the continuance of it, will be a good inducement to the Court to which such a recognisance shall be certified, to discharge it, and yet it is said, that the Sessions in that case may in their discretion refuse to discharge it.

Continuing
Recognisance.

If a man be bound to keep the peace towards the King and all his people, and especially towards a certain person, there, though such person comes not to desire that the peace may be continued, yet the Court by their discretion may bind him over till the next Sessions, and that may be, to keep the peace to-

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wards that person only, if they shall think good ; for it may be that the person who first craved the peace, is sick, or otherwise hindered, so that he cannot come to that Sessions to demand the continuance of the peace for a longer time.

Likewise, if the party be imprisoned for default of sureties, and afterwards he that demanded the peace against him happen to die, it seems the Justice may make his Liberate or Warrant for the delivery of such prisoner, for after such death there seems no cause to continue the other in prison. Also any Justice may upon the offer of such prisoner take surety of him for the peace, and may thereupon deliver him. 5 *Burn's*, 289 to 293.

Party demanding sureties dying.

Form of Complaint to require Surety for the Peace and good Behaviour.

County of } The information and complaint of A. C. of—
 } in the said county of— yeoman, taken upon oath before me A. M. Esquire, one of His Majesty's Justices of the Peace in and for the said county, the — day of — in the year of our Lord one thousand eight hundred and —

The said complainant saith, that A. D. of— in the said county, yeoman, did on the — day of — now last past, at — in the said county, threaten to — [here state the precise threats and words used] and that from the above and other threats used by the said A. D. towards this complainant, he this complainant is afraid that the said A. D. will do him some bodily injury, and therefore prays that the said A. D. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him this complainant. And the said A. C. also says, that he doth not make this complaint against, nor require such sureties from the said A. D. from any malice or ill will, but merely for the preservation of his person from injury.

A. C.

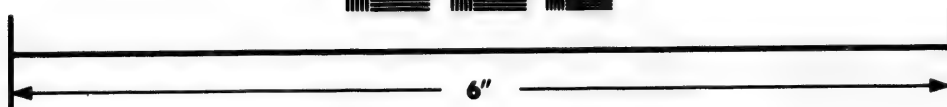
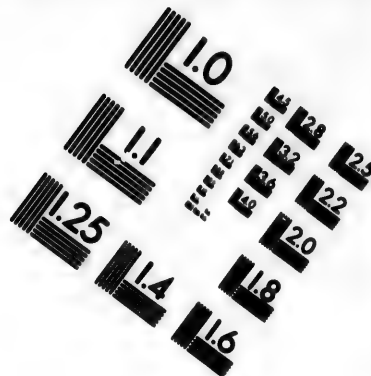
Sworn before me, A. M., J. P.

Warrant on the Foregoing Complaint.

County of } To A. B. one of the Constables of the Town-
 } ship of — in the said county, and to the other
 [Seal.] constables of the said township.

WHEREAS A. C. of — in the said county, yeoman, hath this day made oath before me A. M., Esquire, one of His Majesty's Justices of the Peace, in and for the said county, that A. D. of — in the said county, yeoman, did on the — day of — last, at — in the said county, threaten to





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(716) 872-4503**

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SURETY FOR THE PEACE, &c.

&c. [here recite the words of the complaint] and that from the above and other threats used by the said A. D. towards the said A. C., he the said A. C. is afraid that the said A. D. will do him some bodily injury; and therefore the said A. C. hath prayed, that the said A. D. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him the said A. C.; I do therefore hereby require and command you, to apprehend and bring the said A. D. before me, or some other of His Majesty's Justices of the Peace in and for the said county, to answer the said complaint, and to find sufficient sureties to keep the peace and be of good behaviour towards His Majesty and all his liege people, and especially towards the said A. C. for such term as shall be then enjoined him. Given under my hand and seal, at — the — day of — in the year of our Lord one thousand eight hundred and —
A. M., J. P.

[If the Justice intend to bind the party to appear at the Sessions, the form of the warrant must be altered thus:—
“To find sufficient sureties, as well for his appearance at the next General Sessions of the Peace to be held for the said county, to answer the said complaint, as also in the mean time to keep the peace and be of good behaviour towards His Majesty and all his liege people, and especially towards the said A. C.”]

Commitment for want of Sureties, for a limited Period, fixed by the Justice.

County of } To A. B. one of the constables of the town-
ship of — in the said county, and also to the
[Seal.] keeper of His Majesty's gaol for the said county.

WHEREAS A. C. of — in the said county, yeoman, hath made oath, &c. [here recite the complaint precisely as in the foregoing warrant, and then proceed thus:] And whereas the said A. C. was this day brought before me, to answer the said complaint, and I the said Justice have ordered and adjudged, and do hereby order and adjudge, that the said A. D. shall enter into his own recognisance, in the sum of £50 with two sufficient sureties, in the sum of £25 each, to keep the peace and be of good behaviour towards His Majesty and all his liege people, and particularly towards the said A. C. for the space of twelve calender months now next ensuing: And insomuch as the said A. D. hath refused to enter into such recognisance, and to find such sureties as aforesaid, I do hereby require and command you the said constable, forthwith to

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convey the said A. D. to the common gaol of the said county, and to deliver him to the keeper thereof, together with this warrant : And I do also require and command you the said keeper, to receive the said A. D. into your custody in the said gaol, and him there safely to keep, for the space of twelve calendar months, unless he in the mean time enter into such recognisance with such sureties as aforesaid, to keep the peace in the manner and for the term aforesaid. Herein fail not. Given under my hand and seal, at — the — day of — in the year one thousand eight hundred and —

A. M., J. P.

Commitment for want of Sureties to appear at the Sessions.

County of } To A. B. one of the constables of the town-
ship of — in the said county, and to the keeper
[Seal.] of His Majesty's gaol for the said county.

WHEREAS A. C. of — in the said county, yeoman, hath made oath, &c. [here recite the complaint, as in the preceding form of warrant to the constable :] And whereas the said A. D. having been this day brought before me the said Justice, to answer the said complaint, and, having been required by me to find sufficient sureties, as well for his appearance at the next General Sessions of the Peace to be held in and for the said county, to do what shall be then and there enjoined him by the Court, as also in the mean time to keep the peace and be of good behaviour towards His Majesty and all his liege people, and especially towards the said A. C., hath neglected and refused to find such sureties ; I do therefore hereby require and command you the said constable, forthwith to convey the said A. D. to the common gaol of the said county, and to deliver him to the keeper thereof, together with this warrant : And I do also require and command you the said keeper, to receive the said A. D. into your custody, and him there safely to keep until the next General Sessions of the peace to be held in and for the said county, unless he in the mean time find sufficient sureties, as well for his appearance at the said Sessions, as in the mean time to keep the peace as aforesaid. Given under my hand and seal, at — the — day of — one thousand eight hundred and —

A. M., J. P.

Recognisance for the Peace and Good Behaviour.

County of } BE it remembered, that on the — day of —
in the — year of the reign of our Sovereign Lord

King William the Fourth, and in the year of our Lord one thousand eight hundred and —, A. D. of — in the county aforesaid, yeoman, A. S. of the same place, yeoman, and B. S. of the same place, yeoman, came before me A. M. Esquire, one of His Majesty's Justices of the Peace, in and for the said county, and acknowledged themselves to owe to our said Lord the King, to wit, the said A. D. the sum of — pounds, and the said A. S. the sum of — pounds, and the said B. S. the sum of — pounds, of lawful money of the Province of Nova Scotia, to be respectively made and levied of their several goods and chattels, lands and tenements to the use of our said Lord the King, his heirs and successors, if he the said A. D. shall fail in performing the condition underwritten.

Acknowledged before me,

A. M., J. P.

The condition of this recognisance is such, that if the above bounden A. D. shall keep the peace and be of good behaviour towards the King and all his liege people, and especially towards A. C. of — in the said county, yeoman, for the term of twelve calender months, now next ensuing, then the said recognisance shall be void, or else remain in its force.

[If the Justice bind the party to appear at the Sessions, the condition of the recognisance must be thus,—that if the said A. D. shall personally appear at the next General Sessions of the peace to be held in and for the said county, to do and receive what shall be then and there enjoined him by the Court, and in the mean time shall keep the peace and be of good behaviour towards His Majesty and all his liege people, and especially towards the said A. C. Then this recognisance shall be void, or else to remain in its force.]

The manner of calling the parties and binding them, when in the presence of the Justice, will be found described under the Title,—Recognisance.

Form of Discharge of one Committed for want of Sureties.

County of } To the Keeper of His Majesty's gaol for the
 } said county.

[Seal.]

DISCHARGE out of your custody the body of A. D. of — in the said county, yeoman, he having this day entered into a recognisance before me, one of His Majesty's Justices of the Peace in and for the said county, in the sum of — pounds, with two sureties in — pounds each, to keep the peace and be of good behaviour towards His Majesty and all his liege peo-

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ple, and especially towards A. C. of — in the said county, yeoman, for the space of twelve calender months now next ensuing. Given under my hand and seal, the — day of — one thousand eight hundred and —.

A. M., J. P.



SWEARING.

By the Statute of the 32 G. 2, c. 20. 1 V. 28, If any person shall profanely swear or curse, in the presence or hearing of any Justice of the Peace, or shall be thereof convicted by the oath of one credible witness, or by the confession of the party before any Justice of the Peace, every person offending shall forfeit to the use of the poor of the town where such offence shall be committed, for the first offence, two shillings, and in case such person shall, after conviction, offend a second time, he shall forfeit double, and if a third time, treble the sum to be paid for the first offence; and upon neglect of payment, the Justice shall issue his warrant to a constable, commanding him to levy the said forfeitures, by distress and sale of the goods of such offender; and the forfeiture, when paid or levied, shall be delivered to the Overseers of the poor, for the use of the poor as aforesaid; and in case no distress can be had, such offender, being above the age of sixteen years, shall by warrant of the Justice be set in the public stocks for one hour, for every single offence; and for any number of offences for which he shall be convicted at one time, two hours; and if the party offending be under the age of sixteen years, and shall not pay the forfeitures, he shall, by warrant of the Justice, be whipped by the constable, or by the parent, guardian, or master of such offender, in presence of the constable; Provided always, that every such offence be proved or prosecuted within ten days after the offence committed."

Sec. 4. The Justices of the Peace shall register all the convictions made before them, of such profane swearing and cursing, and shall certify the same to the next Quarter Sessions, to be kept upon record by the Clerks of the Peace, to be seen without fee.

Sec. 5. If any action shall be brought against any Justice of the Peace, or officer, for any proceedings on the said offences, in pursuance of this Act, the defendant may plead the general issue, and give the special matter in evidence; and if the plaintiff shall be nonsuit, or a verdict shall be found for the defendant, such defendant shall have treble costs. *Perpetual.*

[NOTE. This Statute does not extend to common swearing in general, although this, in every kind and form of it, is a base and wicked practice, and a direct breach of the Divine command. By the profane oaths and curses mentioned in the Act, are intended, only those oaths and curses in which any Divine and sacred name, attribute, or object, is profanely used and expressed.]

Information.

County of } The information of A. C. of — in the said
 } county, yeoman, made on oath this — day of
— in the year of our Lord one thousand eight hundred and
— before me A. M., Esquire, one of His Majesty's Jus-
tices of the Peace in and for the said county.

The said A. C. saith, that on — the — day of —
now last past, at — in the township of — in the said
county, he heard A. O. of — in the said county, yeoman,
swear one profane oath, [or curse one profane curse] in these
words, to wit —

Before me, _____ A. C.

A. M., J. P.

Summons thereupon.

County of } To A. B. one of the constables of the township
 } of — in the said county.

[Seal.]

WHEREAS information hath been this day made before me
A. M. Esquire, one of His Majesty's Justices of the Peace for
the said county, upon the oath of A. C. of — in the said
county, yeoman, that on — the — day of this present
month of —, he heard A. O. of —, in the said county,
yeoman, at — in the township of — in the said county,
swear one profane oath, [or curse one profane curse.] These
are therefore to command you, forthwith to summon the said
A. O. to appear before me, on — next, the — day of this
present month of —, at — o'clock in the forenoon, to an-
swer the premises, and to be further dealt with according to
law. Given under my hand and seal, the — day of —, in
the year of our Lord —

A. M., J. P.

NOTE. The summons should be served, (if possible)
three days before the day fixed for the appearance of the par-
ty. The Form of Conviction will be found under the Title,
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If the Justice convicts for an offence committed in his own presence and hearing, the Information and Summons are needless, and the Conviction may be in the following Form :

County of } BE it remembered, that on the — day of —
 { in the year of our Lord one thousand eight hun-
 [Seal.] dred and — at the township of — in the
 said county of — A. O. of the township of — in the
 said county, yeoman, did swear one profane oath, in the fol-
 lowing words, to wit, — in the presence and hearing of me
 A. M., Esquire, one of His Majesty's Justices of the Peace
 in and for the said county ; Whereupon it is considered and
 adjudged by me the said Justice, that the said A. O. be con-
 victed, and he is accordingly by me hereby convicted of the
 offence aforesaid, in my own presence and hearing, according
 to the form of the Statute in that case made and provided ;
 And I do hereby adjudge, that the said A. O. for the said of-
 fence hath forfeited the sum of two shillings, to be paid and
 applied as the law directs. In witness whereof, I the said
 Justice have to this present conviction set my hand and seal,
 at — in the said county, this — day of — in the year
 above written.

A. M., J. P.

Warrant of Distress, on a Conviction for Profane Swearing.

County of } To A. B. one of the Constables of the town-
 { ship of — in the said county.

[Seal.] WHEREAS, on the — day of — in the year of our
 Lord one thousand eight hundred and —, A. O. of —,
 in the said county, yeoman, was duly convicted by and before
 me, A. M., Esquire, one of His Majesty's Justices of the
 Peace in and for the said county, for that he the said A. O. on
 the — day of —, in the year aforesaid, at the township of
 —, in the said county, did swear one profane oath, in these
 words, to wit, — whereby he hath forfeited the sum of two
 shillings, according to the Statute in such case made and pro-
 vided ; And whereas the said A. O. hath not yet paid the said
 sum of two shillings, or any part thereof, but still neglects and
 refuses to pay the same ; These are therefore to command
 you, forthwith to levy the said sum of two shillings, by dis-
 training the goods and chattels of him the said A. O. whereso-
 ever they may be found within my jurisdiction, and if within
 the space of five days next after such distress by you taken,
 the said sum, together with reasonable charges for taking and

keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of two shillings to the Overseers of the poor for the said township of — in the said county, for the use of the poor of the said township, rendering to him the said A. O. the overplus upon demand, the necessary charges of taking, keeping and selling the said distress being first deducted ; and if sufficient distress cannot be found, whereon to levy the said sum, that you certify the same to me, together with the return of this warrant. Given under my hand and seal, at — in the said county, the — day of — in the year aforesaid.

A. M., J. P.

Certificate by the Constable of want of Distress.

County of } I, A. B. one of the constables of the township
 } of — in the said county, do hereby certify to
 A. M., Esquire, the Justice within named, that I have made diligent search for, but do not know of, nor can find any goods or chattels of the within named A. O. whereon to levy the within sum of two shillings.

A. B.

Before me the said Justice,
 A. M., J. P.

Commitment to the Stocks, for Profane Swearing ; for want of goods whereon to levy the Penalty.

County of } To A. B. one of the constables of the town-
 } ship of —, in the said county.

[Seal.]

WHEREAS A. O. of —, in the said county, yeoman, was on the — day of —, in the year of our Lord one thousand eight hundred and —, convicted by and before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, for that he the said A. O. on the — day of —, in the year aforesaid, at the township of — in the said county, did swear one profane oath, in these words, to wit, — contrary to the Statute in such case provided ; whereby he hath forfeited the sum of two shillings ; And whereas it duly appears to me, that the said A. O. is not able to pay the said sum of two shillings, and the same is not yet paid ; These are therefore to require you, in His Majesty's name, to set him the said A. O. in the public stocks, at —, in the said county, there to remain for the space of one

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— day of —, in the year of our Lord one thousand eight
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A. M., J. P.

TANNERS, see HIDES.

TAVERNS.

THE greater part of the regulations concerning taverns, contained in our Statutes, relate and apply equally to all shops and other places where spirituous liquors are sold under licenses. It is therefore thought most appropriate as well as convenient, to set forth all such regulations under the general Title,— Spirituous Liquors. Moreover, it being highly desirable to keep this work within the most moderate compass, consistent with all requisite information and assistance to Magistrates, all needless recitals and repetitions will by this arrangement be avoided. Reference therefore, when required, can be had to the general Title just mentioned, and under it will be found the several enactments relating to the granting and suspending of licenses to keep taverns,—hanging out signs,—preserving order in taverns,—prohibiting the sale of liquors therein to servants and certain other persons,—against selling spirituous liquors on credit,—taking pledges for payment of the same, and various other regulations concerning taverns, together with the requisite Forms and Directions as to the recovery of penalties. The present Title includes only such regulations, contained in our Statutes, as relate, either exclusively, or more particularly, to taverns, together with certain other matters, concerning inns and taverns in general, which it will be useful for every magistrate to know.

I. CERTAIN REGULATIONS CONCERNING TAVERNS ; BY SEVERAL STATUTES.

II. OTHER MATTERS RELATING TO INNS AND TAVERNS, IN GENERAL.

I. CERTAIN REGULATIONS CONCERNING TAVERNS ; BY SEVERAL STATUTES.

By the Statute of the 2 W. 4, c. 3, § 22. 4 V. 116, The

Accommoda-
tions in Ta-
verns.

Justices in Sessions shall not grant a tavern license to any person (except in the Town of Halifax,) unless he, she, or they shall keep a house of public entertainment for travellers; and every person obtaining such tavern license, shall cause a sign to be set up, over or near the door of such tavern, with his or her name thereon, and a plain inscription, setting forth that entertainment may be had there for man and horse; and shall also keep and have in his or her house, two good beds, over and above what may be required for the lodging of his or her family and servants; and shall also be provided with good and wholesome victuals and drink for the accommodation of travellers, and with stables, hay, and provender for horses; in default whereof, it shall be lawful for the Justices in Sessions, on complaint thereof by one or more witnesses upon oath, to take away such licenses as forfeit.

Selling Goods
in Taverns.

Sec. 26. It shall not be lawful for any tavern-keeper, or person holding a tavern license within this Province, unless such person also holds a general license, hereafter to sell, vend, or expose to sale, in or about his or her tavern, any goods, wares, or merchandize whatsoever, other than the victuals or drink necessary to be used and consumed, and which are usually used and consumed in taverns; nor shall it be lawful for such tavern keeper, or person holding a tavern license, to suffer the same to be done; and any person or persons offending against the provisions contained in this clause, shall forfeit and pay the penalty of twenty pounds for each and every offence, to be recovered and applied in the manner herein mentioned. *Perpetual.*

[NOTE. This penalty is to be recovered before two Justices, in the same manner, and by the like proceedings as in the case of selling spirituous liquors without a license, as to which proceedings, with the requisite Forms, see Title,—*Spirituous Liquors.*]

By Sec. 5 of the Act of the 7 W. 4, c. 15, Sess. 1837, No Justice of the Peace, (except in the Town of Halifax,) shall be allowed or considered eligible to hold or take out any tavern license for the retail of ardent spirits.

Sec. 6. Nothing in this Act, or in any other Act contained, shall extend to prevent any person holding a tavern license, (except in the Town of Halifax,) from selling any quantity of spirits, wine, or other liquor, not exceeding at any one time, one quart, to any person whomsoever, (excepting Indians,) whether the same is to be consumed in his house, or elsewhere. *Annual.*

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II. OTHER MATTERS RELATING TO INNS AND TAVERNS,
IN GENERAL.

INNKEEPERS are bound by law to receive guests who come to their inns, and are also bound to protect the property of those guests. They have no option either to receive or reject guests ; and as they cannot refuse to receive guests, so neither can they impose unreasonable terms on them.

Innkeepers bound to receive guests, and may be prosecuted for refusing.

Inns being intended for the receiving and lodging of travellers, may be indicted, suppressed, and the innkeepers fined, if they refuse to entertain a traveller without a very sufficient cause.

If one who keeps a common inn, refuse either to receive a traveller as a guest into his house, or to find him victuals or lodging, upon his tendering him a reasonable price for the same, he is not only liable to render damages for the injury in an action at the suit of the party grieved, but may also be indicted and fined at the suit of the King.

An innkeeper may also be compelled to receive a horse, although the owner do not lodge in his house ; because by keeping the horse he has gain ; but it would be otherwise of a trunk, or other dead thing. 1 *Burn's*, 51.

An innkeeper may detain the person of the guest who eats, or the horse which eats, till payment. And this he may do without any agreement for that purpose.

Detaining Person or Goods for Diet.

But a horse committed to an innkeeper, may be detained only for his own meat, and not for the meat of the guest, or of any other horse.

An innkeeper may detain for his keep, a horse left with him to be kept, though the person who left him had no right to him, and though such person did not stay in the inn ; for leaving his horse at an inn makes a man a guest there.

Also, a horse committed to an innkeeper to be kept, and put by him to pasture, may be detained for the pasturage.

Detaining for Pasturage.

An innkeeper that detains a horse for his meat, cannot use him.

The law obliges an innkeeper to keep safely the goods of persons coming to his inn as guests. And although the guest doth not deliver his goods to the innkeeper to keep, nor acquaints him with them, yet if they be stolen the innkeeper shall be charged. 5 *Burn's*, 55 to 57.

Liability of Innkeeper for goods of guest.

A guest removing, in the night, goods out of his chamber in an inn, and carrying them to the stable, intending to ride off with them, is guilty of felony. *Id.* 59.

TAXES, see—RATES.

TENANT, see—LANDLORD AND TENANT.

THISTLES.

By the 31 G. 3, c. 6. 1 V. 285, In all such counties where it may be necessary, the Justices in their General Sessions of the peace, held in the beginning or spring of the year, shall make such regulations as to them shall seem proper and necessary, for preventing the growth and increase of thistles on the lands within such counties respectively, and the regulations so made shall be published, by posting the same in the most public places in each township within the said county.

Sec. 2. The said Justices in their Sessions as aforesaid, shall appoint two or more proper persons in each township within such county, to be inspectors for the purpose of carrying into execution the regulations so made, and if the persons so to be appointed, shall refuse to accept such office, or having accepted the same, shall neglect their duty therein, they shall forfeit and pay a fine not exceeding three pounds.

Sec. 3. Every person who shall refuse or neglect to pay due obedience to such regulations so made by the said Justices, shall forfeit and pay a fine of forty shillings, for each such refusal or neglect.

Sec. 4. The several penalties and forfeitures aforesaid shall be recovered on complaint and due proof before the General Sessions of the Peace, and on non-payment thereof, be levied by distress and sale of the offender's goods and chattels, by a warrant from the said Court; one moiety thereof to the person or persons who shall prosecute the same to effect, the other moiety to be applied to the purpose of repairing the roads in the township wherein the offence shall have been committed, at the discretion of said Court.

Sec. 6. This Act shall be publicly read at the first Sessions of the Peace in every year after the Grand Jury are sworn. *Perpetual.*

TIMBER, see—LUMBER.
TOLLS, see--GRAIN.

TOWN OFFICERS.

By the 5 G. 3, c. 1. 1 V. 106, The Grand Juries for the several counties in this Province, shall, annually, at the first term of the Court of General Sessions, nominate out of every township in each county, respectively, ten fit persons, out of whom the said Court shall appoint five, to be Surveyors of lines and bounds of each respective township, who are hereby empowered to survey, examine, and ascertain the lines and bounds of their said respective townships, agreeable to the several grants thereof, and who shall also be Overseers of the poor of the said township ; and at the said time, the said Grand Jury shall in like manner nominate two persons, one of whom the Court shall appoint to be Town Clerk of the said town, who shall be sworn, truly to enter and record all such matters and things as shall relate to the said township, and shall appertain to his office ; and shall also nominate four or more Constables, of whom the Court shall appoint two or more as they shall see convenient, to be constables in the said township ; and shall also nominate four Surveyors of Highways, of whom the said Court shall appoint two, to be surveyors of highways in the said township ; and also shall nominate four Fence Viewers, of whom the said court shall appoint two, to be fence viewers in the said township ; and shall also nominate two Clerks of the Market, of whom the said Court shall appoint one, to be clerk of the market in said township ; and shall also nominate four Pound Keepers, of whom the said Court shall appoint a sufficient number in their discretion, to be pound keepers in the said township ; and shall also nominate four or more Cullers and Surveyors of Fish, of whom the said Court shall appoint a sufficient number in their discretion, to be cullers and surveyors of fish, in the said township ; and shall also nominate four Surveyors of Lumber and cordwood, of whom the said Court shall appoint two, to be surveyors of lumber and cord wood in the said township ; and shall also nominate two Sealers of Leather, of whom the said Court shall appoint one, to be sealer of leather in the said township ; and shall also nominate four Guagers of Casks, of whom the said Court shall appoint two, to be guagers of casks in the said township ; and shall also nominate four Hogreaves, of whom the said Court shall appoint two, to be hogreaves in the said township ; who shall respectively be sworn to the faithful discharge of their duty, in manner as is already prescribed by the laws of this Province, and shall in every respect conform to the said laws ; and upon their, or any of their refusal to accept, or being guilty of any neglect or misbehaviour in the execution of the duty of

Nominating
and appoint-
ing certain
Town officers

Surveyors of
Bounds and
Overseers of
Poor.

Town Clerk.

Constables.

Surveyors of
Highways.

Fence viewers

Clerks of the
Market.

Pound Keep-
ers.

Cullers and
Surveyors of
Fish.

Surveyors of
Lumber, &c.

Sealers of
Leather.

Guagers of
Casks.

Hogreaves.

Refusing to
accept Office,
or misbehav-
ing.

Filling up vacant Office.

their respective offices, they shall forfeit and pay for the use of the poor of the said township, the sum of forty shillings for every such refusal, neglect or misbehaviour; to be recovered upon proof of such refusal, neglect, or misbehaviour, by the oath of one credible witness, before any two Justices of the Peace for the county wherein such township lies, to be levied by warrant of distress and sale of the offender's goods and chattels: and if any person so nominated and chosen shall leave the Province, change the town of his residence, or happen to die within the period for which he was nominated and appointed to serve in any of the said offices, in such case, any two Justices of the Peace for the county, shall and may nominate and appoint a fit person or persons to serve in such vacant office, until another shall be nominated by the Grand Jury and appointed by the said Court of General Sessions at their meeting next ensuing such vacancy. *Perpetual.*

NOTE. Surveyors of highways are now appointed under the 7 G. 4, c. 2. 3 V. 230, which imposes a fine of £5. for refusing the office, or neglect of duty, to be recovered in a Court of Record.

Appointment of Surveyors of Hay.

By the 17 G. 3, c. 1. 1 V. 204, The Grand Juries for the several counties, at the first General Sessions of the Peace in each year, shall nominate four persons, out of whom the Court shall appoint two, to be surveyors and weighers of hay in each township, who shall be sworn to the faithful discharge of their duty, in manner as is prescribed by the laws of this Province, and the like proceedings shall be had relative to such weighers of hay, as are directed to be observed concerning the several town officers to be chosen and appointed in pursuance of the Act made in the fifth year of the reign of His present Majesty, entitled, "An Act for the choice of Town Officers and regulating Townships."

Sec. 2. The surveyors and weighers of hay shall be paid for their trouble in viewing and weighing of hay, at the rate of one penny per hundred weight, and four-pence per mile travel, if such travel shall exceed one mile, to be paid by the seller. *Perpetual.*

Appointment of Measurers of Corn, Salt, Coals, and Lime, and Inspectors of Bricks.

By the 32 G. 3, c. 4. 1 V. 291, The Grand Jurors for the several counties, at the first sitting of the Court of General Sessions in every year, shall nominate four fit persons in each and every township within their respective counties, out of whom the said Court shall appoint two, for the purpose of measuring all species of corn, or grain, salt, coals, and lime, and for inspecting all bricks which shall be offered for sale, and sold within their respective townships.

Sec. 6. The officers so appointed shall be respectively

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sworn to the faithful discharge of their duty ; and upon refusal to accept of said offices, or being guilty of any neglect or misbehaviour in the execution of the duties thereof, they shall forfeit and pay for the use of the poor in the town wherein they reside, a sum not exceeding three pounds, to be recovered before any two Justices of the Peace for the same county. *Perpetual.*

[For the allowances to the several officers named in this Act, see respectively, Titles,—Bricks ; Coals ; Grain ; Lime ; Salt.]

By the 51 G. 3, c. 24. 2 V. 79, The Grand Juries in the several Courts of General or Quarter Sessions of the Peace, at such term as the Justices of such Courts shall direct, shall, in future, annually nominate such number of fit and proper persons for each township and district, as the said Justices shall direct, to execute and discharge the duties of town officers for such township or district as they shall be appointed for, respectively ; out of whom the said Court of Session shall appoint such number as they may deem expedient, to serve in the several offices to which they shall be so appointed, any law, usage or custom to the contrary notwithstanding. *Perpetual.* [This Statute was repealed in the year 1826, but was revived by the 7 W. 4, c. 61, Sess. 1837.]

The Statute of the 3 W. 4, c. 53. 4 V. 234, Directs the appointment of Inspectors of smoked herrings, and prescribes regulations concerning the office and the duties thereof ; as to all which, see Title,—Fish.

Inspectors of
Smoked Her-
rings.

The 4 W. 4, c. 12. 4 V. 263, Directs, that the General Sessions shall appoint Supervisors of public grounds in every township, for which see Title,—Public Grounds.

Supervisors
of Public
Grounds.

Assessors and Collectors of county rates are appointed under the 5 W. 4, c. 13. 4 V. 385, and regulations respecting the said offices, and the manner of recovering the penalties relating to the same, are therein prescribed, for all which, see Title,—Rates.

The penalties imposed by the two Statutes first mentioned under this Title, for refusing to accept office, or neglect of duty therein, are to be recovered in the same manner as other penalties of the like nature, on the information of any person who will prosecute for the same. The party complained of must be summoned in the usual manner, to appear and answer, and on conviction, a warrant of distress is the only final process which can be issued. Directions as to such prosecutions, with the general Forms requisite, which can readily be filled up so as to serve, will be found under the respective Titles,—Information ; Summons ; Conviction ; Distress.

Directions.

With regard to the penalty in the Statute relating to the Measurers of grain, and certain other articles, and the Inspectors of bricks, the proceedings and Forms, in prosecutions for the recovery thereof, will also be the same as in similar cases, until after conviction. As no final process, either of distress, commitment, or other description, is directed or alluded to in the Act, no final process of any kind can be issued by the Justices for levying or enforcing the penalty for the same; for reasons which have already been given under several Titles of this work, with reference to other cases of similar omission.

TOWNSHIP LINES.

Running
boundary
lines of
Townships.

By the 5 G. 3, c. 1. 1 V. 107, The original boundary lines of every township or district within this Province, shall be run betwixt township and township, and marks renewed once in three years, namely, on the first Monday in March, by the surveyors of lines and bounds appointed for the respective townships, as directed by this Act, or the major part of them; and the persons so appointed for each respective township are hereby empowered and directed to give six days' notice to the persons appointed for the adjacent townships, of the time and place of meeting for such survey, and any person or persons appointed as aforesaid, refusing or neglecting to attend at the place mentioned in such notice, being duly served therewith, shall forfeit and pay the sum of forty shillings each, to be recovered on complaint before any two Justices for the county where such complaint shall be made; and one half of the forfeiture shall be paid to the person or persons who shall complain and prosecute for the same, and the other half to the Overseers of the poor for the use of the poor of such towns from whence the complaint was made; and whenever the surveyors of any township, which shall have had notice as aforesaid, shall refuse or neglect to attend the said business, the surveyors who shall have given such notice shall, and they are hereby empowered to proceed in running and making such line, which shall be as effectual as if the surveyors of both townships had joined. *Perpetual.*

Raising Money to defray expense of running Lines of Townships.

By the 51 G. 3, c. 4. 2 V. 67, The inhabitants of the several townships shall, at the periods prescribed by law for providing for the poor, vote such sum or sums of money as may be necessary to defray the expense incurred by running or perambulating the bounds of such township, which sum or sums

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of money shall be first approved of and allowed by the Court of General Sessions for the county or district of which such township forms a part, and being so approved, allowed and certified, shall be assessed and collected in the same manner as the money voted for the support of the poor, and shall be applied for the purpose aforesaid."

Sec. 2. "All appeals from the rate so to be made shall be heard and determined in the same manner as appeals from the poor rate are heard and determined.

This Statute is made perpetual by the 1 & 2 G. 4, c. 9. 3 V. 104.

The proceedings and Forms for recovering the penalty imposed by the Statute first mentioned under this Title, will be the same as in similar cases, until after conviction, and are set forth under the respective Titles,—Information ; Summons ; Conviction. As no final process for enforcing payment of the penalty, is mentioned in the Act, no such process can be issued by the Justices.

Directions.

TREASON.

By the Statute of the 32 G. 2, c. 13. 1 V. 15, it is enacted "That if any person or persons shall compass or imagine the death of the King, or shall levy war against him, or adhere to his enemies, or give them aid or comfort, or shall forge or counterfeit the King's money, being gold or silver coin of England, or of Great Britain, or shall counterfeit the King's Great Seal, or Privy Seal, or the Seal of this Province ; and shall thereof be duly convicted, the person or persons so offending are hereby declared, and shall be adjudged to be traitors and shall suffer as in cases of high treason ; and that all treasons declared by the Acts of Parliament of England, or of Great Britain, shall be deemed and adjudged to be treason within this His Majesty's Province, and none other ; and that such Acts of Parliament as direct the proceedings and evidence against trials of such traitors, shall have their full force and effect, and be observed as the rule in all trials for treason in this Province. *Perpetual.*

Notwithstanding that treason and mis-prision of treason are not within the letter of the commission of the peace, yet inasmuch as they are against the peace of the King, and of the realm, any Justice of the Peace may, either upon his own knowledge, or the complaint of others, cause any person to be

How a Justice shall proceed on a charge of Treason.

apprehended for any such offence. And such Justice may take the examination of the person so apprehended, and the information of all those who can give any material evidence against him, and put the same in writing, and also bind over such who are able to give any such evidence, to the Court of gaol delivery; and certify his proceedings to such Court. He must also commit the prisoner to gaol, for Justices of the Peace cannot by any means let to bail, in a case of treason.

Bare Words
do not amount
to Treason.

No Accessaries
in Treason,
but all
are Principals.

Misprision of
Treason.

It seems to be clearly agreed at this day, that bare words spoken, do not amount to treason, but are only a high misdemeanor. In high treason there are no accessaries, but all are principals; and therefore, whatsoever act or consent will make a man accessory to a felony before the act done, the same will make him a principal in case of high treason. 5 *Burn's*. 481. 3.

Misprision of treason, in legal understanding, signifies, when one knowing of any treason, though no party or consentor to it, yet conceals it, and doth not reveal it in convenient time. *Id.* 487.

NOTE. The proceedings by and before Justices on an information of any treason will be similar to those in cases of capital felonies, and for which, see respectively, 'Titles,—Information; Warrant; Examination; Commitment.



TREASURERS (COUNTY.)

By the 5. W. 4, c. 13. 4 V. 385, The Grand Jury in each of the several counties and districts, except the county of Halifax, shall annually at the Court of General Sessions held for said county or district, present to the said Court of Sessions, the names of three fit and proper persons, being freeholders in such county or district, one of whom the said Court shall appoint to be a Treasurer for the said county or district for the year ensuing, who shall forthwith enter into a bond to the King, with sureties to the satisfaction of the said Court, for the faithful performance of the duties of the said office, and who shall thereupon be sworn to the due execution of the said duties, and be invested with all powers and trusts herein after mentioned. *Temporary.*



TREASURY NOTES,—see 'Titles,—FORGERY and LARCENY.

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TRESPASSES.

In treating of the matters which fall within this title, an arrangement of them under the following divisions will, it is thought, be found convenient.

- I. REGULATIONS CONCERNING FENCES, AND OF THE RECOVERY OF DAMAGES FOR TRESPASSES BY CATTLE.
- II. IMPOUNDING CATTLE TRESPASSING, AND HEREIN OF RESCUE, POUND BREACH, AND REPLEVIN.
- III. REGULATIONS CONCERNING CATTLE GOING AT LARGE.
- IV. DESTROYING FENCES, WALLS, &c.
- V. TRESPASSES ON COMMONS.
- VI. PERSONS TRESPASSING ON ENCLOSED GROUND.
- VII. TRESPASSES, BY CUTTING DOWN, INJURING, OR CARRYING AWAY TREES.
- VIII. PROCEEDINGS AFTER JUDGMENT AGAINST A TRESPASSER.

I. REGULATIONS CONCERNING FENCES, AND OF THE RECOVERY OF DAMAGES FOR TRESPASSES BY CATTLE.

By the Statute of the 3 G. 4, c. 32, 3 V. 136, "All fences belonging to any enclosed lands shall be built or made with stones, pickets, boards, logs, poles, brush, or posts and rails, unless the lands are bounded by ponds, unfordable rivers, or the sea, or surrounded by good and sufficient hedges; and such fences and hedges shall be at least four feet and a half high, except on the peninsula of Halifax, where four feet in height shall be adjudged a legal fence under this Act; and if any damage be done by breaking such enclosures and destroying any of the product thereof, by horses, sheep, hogs, and neat cattle, if such enclosures shall at the time of such damage be enclosed by a good and sufficient fence agreeable to this law, in the judgment of the fence viewer who is hereby appointed to view the same, the owner of such cattle so trespassing shall pay to the party injured the value of all such damages, to be ascertained on an appraisement thereof by three credible persons living in the neighbourhood, being first sworn before one of His Majesty's Justices of the Peace in the county where such lands lie, truly to value the same; and in case the owner of the said cattle or hogs shall refuse to pay the value of such appraisement, upon notice thereof given to him, the injured

What Fences shall be lawful.

Proceedings, where Cattle break enclosures and do damage.

Building and
maintaining
Fences be-
tween adjoining
Lands.

party may have and maintain his action therefor before any one or more of the said Justices, or before the Inferior Court of Common Pleas, according to the value of such damage."

Sec. 2. The proprietor of any field adjoining to another, enclosed and improved, shall build up and maintain his part or proportion of fencing, with a good and sufficient fence of four feet and an half high, on that part of such land as is adjoining to his own; and in case he neglects so to do within the space of ten days after notice given him, it shall be lawful, and any one of the fence viewers upon application being made to him, in such case, is hereby empowered forthwith to cause such deficient fence to be raised or made, or otherwise to repair any fence already made, if in his judgment the same is insufficient; and the person or persons that of right ought to build and maintain the same, shall pay double the costs and charges expended for the closing thereof; and in case of refusal such fence viewer may recover the same by action on the case, according to the value, in manner aforesaid. Provided always, that no fence viewer shall be allowed more than three shillings per day in his account, for his own trouble and time expended therein. And if any fence viewer, when notified, shall neglect his duty herein, he shall forfeit forty shillings for every offence. [By the 9 G. 4, c. 12. 4 V. 29, the fence viewer may build or repair the fence, after three days' notice, instead of the ten days mentioned in this clause.]

Fence need
not be kept on
wood, barren,
or burnt land.

Sec. 3. Provided that nothing herein contained shall be construed to extend to compel any owner or proprietor of any wood, barren, or burnt land, and not under improvement, to make any part of the fence against or on the said wood, barren, or burnt land, any law or usage to the contrary notwithstanding.

What rivers,
&c. shall be
considered a
sufficient
fence.

Sec. 15. Such rivers, creeks, bays, harbours, and inlets of the sea only shall be deemed sufficient and lawful fences, as in the judgment of the fence viewers of the township or place where such lands lie, shall be sufficiently deep and inaccessible to prevent the passing of cattle. *Temporary.*

Application to
Sessions from
the judgment
of a Fence
Viewer.

In amendment of this last clause, and also of the preceding regulations relating to damage done by cattle breaking into enclosures, the Statute of the 6 W. 4, c. 40. 4 V. 46, enacts, "That if any person or persons shall feel aggrieved with the judgment given by the fence viewers, under the fifteenth clause of the said Act hereby amended, or shall desire to obtain the judgment and decision of the Court of General Sessions instead of the fence viewers, then and in either of such cases, it shall be lawful for such person or persons to make application to the General Sessions of the peace in and for the county or district wherein such fence viewers may have authority, and thereupon

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it shall be lawful for the said General Sessions to enquire into the subject matter of such application, and upon hearing the parties interested, and examination of witnesses, to make such order and judgment in respect to such application, as may be deemed by the said Court to be just and reasonable; and the order and judgment of the said Court shall be binding and conclusive upon all fence viewers, and other parties interested or concerned.

Sec. 2. In every case where any damage shall be done to the enclosed lands of any person or persons, by any horse, cattle, sheep, or swine breaking through the fences enclosing such lands, the owner or owners of the horse, cattle, sheep, or swine, shall be liable for the damage so done, under the said Act hereby amended, in case that part of the fence whereon the said horse, cattle, sheep, or swine have made a breach, shall be a lawful fence, notwithstanding some other part of the fences surrounding said enclosed lands may not be a lawful fence.

Sec. 3. The owner or owners of any horse, cattle, sheep, or swine breaking through any division fence which the said owner or owners shall be bound to repair and keep up, shall be liable for the damage done by such horse, cattle, sheep, or swine upon the land of any other person or persons, enclosed or partly enclosed by such division fence, notwithstanding the same may not be a lawful fence. *Annual.*

By Sec. 12 of the before mentioned Act of the 3 G. 4, c. 32, In all cases where a trespass, or supposed trespass shall have been committed by horses, neat cattle, sheep, goats or swine, and that the value of the damage alleged to be suffered shall not exceed the sum of three pounds, the same shall be heard and tried before one or more Justices of the Peace, who shall summon the parties before him or them, and proceed thereon, as in cases of debt, to determine the amount of the damages and costs, and give judgment accordingly.

By the 4 & 5 G. 4, c. 8. 3 V. 182, it is enacted, That it shall be lawful for any person or persons entitled thereto, to commence prosecutions under the aforesaid Act of the 3. G. 4, c. 32, at any time within one year from the time of the committing of the offence. [The duration of this Act is not limited.]

By the provision in the first clause of the first-mentioned Act, relative to the fence vewer recovering the sum expended by him for making up any delinquent's proportion of a division fence, is to be understood, that if such expense does not exceed three pounds, it may be recovered by the fence vewer, before one Justice, in the same manner and by the same forms

When Owner of Cattle shall be liable for damage done by them, although part of a Fence is defective.

Owner of cattle, liable for damage on Lands of another, through his own neglect of repairing division fence.

Recovering Damages not exceeding £3 before a Justice.

Limitation of Prosecutions.

Directions.

as private debts are now recovered before a Justice. If such expense exceeds that amount, it must be sued for in the Supreme or Inferior Court.

As no mode of recovering the penalty for neglect of duty by a fence viewer is mentioned in any of the beforementioned Acts, or in any other, no prosecution for the same can at present legally take place before a Justice or Justices.

With regard to the actions mentioned in one of the before recited clauses, to recover damages not exceeding three pounds, for trespasses done by cattle, the proceedings and Forms will be the same as in suits for the recovery of private debts before a Justice, and for which, see Title,—Summary Trials.

II. IMPOUNDING CATTLE TRESPASSING ; AND HEREIN, OF RESCUE, POUND BREACH, AND REPLEVIN.

Impounding
Cattle and
proceedings
thereon.

B Sec. 4, of the aforesaid Act of the 3. G. 4, c. 32, “ If any damage shall be done by breaking any enclosure, and destroying any of the product thereof, by any horses, sheep, goats, swine, or neat cattle, it shall be lawful for the person or persons whose fence or fences shall have been so broken, and whose enclosures shall have received such damage, to cause the said horses, sheep, goats, swine, or neat cattle, to be impounded, until the owner or owners of such cattle so trespassing shall claim the same ; and the keeper shall cause the same to be cried or advertised in three of the most public places in the township or settlement wherein the trespass shall be committed, as soon as may be, in order that the person or persons injured may proceed against the said owner or owners of such horses, sheep, goats, swine, or neat cattle refusing to pay the damages done by their said horses, sheep, goats, swine, or neat cattle, as is directed by the first clause of this Act ; and the owner or owners of such horses, sheep, goats, swine, or neat cattle, shall pay to the keepers of the pound over and above the damages which shall be adjudged to have been done by the said horses, sheep, goats, swine, or neat cattle, for the support of the same, for each and every day the same shall have been impounded, one shilling for each and every horse and head of neat cattle, and six-pence for every sheep, goat, or swine ; and if the owners thereof shall refuse to pay the same to the keeper of the pound, together with the charge of crying or advertising the same, within eight days after the same shall be impounded, the said horse or horses, neat cattle, sheep, goats, or swine shall be publicly sold, and the money arising from such sale, after deducting therefrom the pay of the keeper for supporting them, and the damage done by the horse or horses, neat cattle,

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sheep, goats or swine, the remainder shall be paid to the owner ; and if no owner shall appear within thirty days, then to the Overseers of the poor for the township or settlement wherein the trespass has been committed."

Sec. 5. If any person or persons shall rescue any swine, horses, sheep, goats, or neat cattle, from any hogreave or other person driving the same to the pound, the offender shall forfeit and pay for such rescue, the sum of twenty shillings, over and above all damages that may be sustained by the trespass of such swine, horses, sheep, goats, or neat cattle, which penalty and damages shall be recovered by the oath of one credible witness before any one Justice, and to be levied by warrant of distress and sale of the offender's goods and chattels. And if any person or persons shall make any breach of the said pound, or shall by any other indirect means deliver any swine, horses, sheep, goats or neat cattle, out of the same, the person or persons so offending, being duly convicted thereof before any two Justices of the Peace, shall forfeit and pay five pounds, to be levied as aforesaid ; and the said penalties for every rescue and pound breach, shall be paid to the Overseers of the poor for the township or settlement in which the offence shall have been committed, for the use of the poor of such township or settlement, after deducting the charges of repairing any such breach of the pound.

Sec. 13. In all such cases where it may be necessary, the Justices of the Peace shall grant replevins, and take security for prosecuting the same with effect, within a term not exceeding seven days, which replevins shall be in the form following,—“ You are hereby commanded to replevy to A. B. his — which C. D. unjustly, as is alleged, detains, under pretence of having committed a trespass, not exceeding the sum of three pounds ; and also to summon the said C. D. to be and appear before me, the — day of — at — o'clock in the — there to answer such things as shall be objected against him by the said A. B. Witness my hand and seal, this — day of — A. D. —” and shall hear the merits of the case between the parties, and shall give judgment and grant Execution as in cases of debt ; and shall receive no more or greater fees than Justices of the Peace have been heretofore allowed in such cases.

By the 3 W. 4, c. 3, 4. V. 193, It is enacted, that upon any conviction under the fifth Section of the aforesaid Act of the 3. G. 4. c. 32, before any Justice or Justices of the Peace, of any person or persons for rescuing any swine, horses, sheep, goats, or neat cattle, from any hogreave or other person driving the same to pound, or for any breach of pound, or delivery of any animal or animals aforesaid out of the same, upon and

Rescuing cattle in custody for trespass.

Breaking Pound.

Replevying, and proceedings thereon.

Form of Writ of Replevin.

Commitment for Rescue, &c. on failure of Distress.

under the warrant or execution issuing upon such conviction, the offender or offenders, for want of goods or chattels of him or them to be found, to satisfy the amount specified in such warrant or execution, with the fees thereon, shall be committed to gaol, there to remain until he or they shall pay such amount and fees, or otherwise be discharged by the order of such Justice or Justices before whom the conviction shall have taken place, and such warrant or execution shall specify to that effect.

Sec. 2. It shall be lawful for such Justice or Justices, to discharge such offender or offenders from gaol, upon its being made to appear to him or them that such offender or offenders is or are wholly unable to pay such amount and fees, and hath not been guilty of any fraud to escape payment thereof. *Annual.*

Directions.

The proceedings and Forms for the recovery of the before-mentioned penalties, for rescue and pound breach, will be the same until after conviction, as in other ordinary cases of prosecutions before Justices, to recover penalties, and will be found under the respective Titles,—Information ; Summons, Conviction.

The Form of a warrant to levy the penalty, on a conviction for either of the said offences, will be found at the end of the Title.

As it is directed that upon a replevin the merits shall be heard and determined, and execution be granted, as in cases of debt, suitable directions as to the hearing of any such case of replevin, and the form of an execution, will be found under the Title,—Summary Trials.

III. REGULATIONS CONCERNING CATTLE GOING AT LARGE.

Making regulations to prevent Trespasses.

By Sec. 6. of the aforesaid Act of the 3. G. 4, c. 32,—The General Sessions, in the several counties and districts, are empowered and directed to make regulations for preventing trespasses by horses, swine, sheep, goats, and neat cattle, going astray or at large, in manner as shall be most agreeable to the county, or districts, or townships therein.

Fine for transgressing regulations.

Sec. 7. If any person shall transgress any regulations made by the Justices in the Sessions as aforesaid, for the preventing of trespasses as aforesaid, he shall be subject to a fine not exceeding forty shillings ; to be recovered on complaint or information before any two Justices of the Peace for the county wherein the offence shall have been committed, or before the Sessions in the said county.

Sec. 8. It shall be lawful for any person whatsoever,

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The penalty of going clau prosecutio found unde Conviction As no mentioned Justices.

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Sec. 2 damage, or placed on causeway, for each and

to take and seize all swine and goats going at large within any township or settlement, and upon proof thereof on the oath of one credible witness, before any one Justice of the Peace for the county or district in which such township or settlement shall be situated, the same shall be by him declared forfeited; one third of the value of which to be paid to the prosecutor, and the remainder to and for the use of the township or settlement wherein the same shall have been so seized and taken, and shall be accordingly disposed of by him, for their use. Provided, the General Sessions shall not have made regulations to the contrary under the provisions of this Act.

Seizing and
selling Swine
going at large.

The proceedings and the Forms, for the recovery of the penalty of forty shillings, mentioned in the second of the foregoing clauses, will be the same, until conviction, as in other prosecutions before Justices to recover penalties, and will be found under the respective Titles,—Information; Summons; Conviction.

Directions.

As no final process for levying this penalty is any where mentioned, no such process of any kind can be issued by the Justices.

IV. DESTROYING FENCES, WALLS, &c.

By Sec. 9, of the last mentioned Act, "If any person or persons (not being the proprietor or proprietors, or having legal authority,) shall throw down or remove any fence or stone wall, or any part thereof, enclosing any parcel of ground within this Province, or shall carry away any rails, posts, gates, bars, boards, or any other materials whereof fences are made, or shall level any ditches, or cut down any hedges, such person or persons shall, upon conviction thereof before the General Sessions of the Peace, or before any Court of Record within this Province, (over and above the damages given to the party injured,) forfeit and pay a sum not exceeding ten pounds; one half to His Majesty for the support of the Government of the Province, and the other half to the prosecutor; and if such person or persons shall be unable to pay the same, he or they shall be committed to the house of correction or gaol, there to be kept to hard labour for two months, or to be whipped at the discretion of the Court.

Punishment
for injuring or
removing
Fences, &c.

Sec. 22. If any person or persons shall cut, pull down, damage, or injure, any railing, stone wall, or fence of any kind, placed on the side or sides of any public square, bridge or causeway, throughout the Province, such person or persons, for each and every offence, shall forfeit and pay a penalty not

Injuring rail-
ing or wall
on sides of
public square,
bridge, &c.

less than five shillings, nor greater than forty shillings, the same to be recovered as directed in and by the twentieth Section of this Act, and shall be expended by the proper officer or officers, in repairing the damage and injury so done."

NOTE. As to proceedings for the recovery of penalties under this clause, see the observations and directions concerning the said twentieth Section, at the close of the seventh division.

V. TRESPASSES ON COMMONS.

By Sec. 14, of the same Statute last mentioned, "Any person or persons who shall cut or carry away any soil or sods, from off any common in the Province, whereby the pasturage shall be injured, or the ground defaced, he or they shall on conviction forfeit and pay for every such offence a sum not exceeding twenty shillings, to be recovered on due proof before any one Justice of the Peace, and be for the use of the prosecutor; and in case the party convicted shall be unable to pay the fine imposed, it shall be lawful for such Justice to commit him to the common gaol of the county, there to remain for eight days, or until he pay such fine."

NOTE. On a complaint of this offence, a formal information in writing need not be taken, but a summons may be immediately issued, according to the general Form under the Title—Summons.

Writ of Execution.

The course of proceeding after conviction, and the punishment here prescribed, are altered by the Statute of the 4 & 5 G. 4, c. 8. 3 V. 182, by which it is provided, that "In all cases of the recovery before one Justice, of any sum of money, under the Act of 3 G. 4, c. 32, executions shall issue as in other cases of debt." See the last Division under this Title. The same Form of Execution therefore must be issued on a conviction for this offence, and the same subsequent proceedings take place, as are set forth, respecting debts, under the Title,—Summary Trials.

VI. PERSONS TRESPASSING ON ENCLOSED GROUND.

By Sec. 19 of the aforesaid Act of the 3 G. 4, c. 32, "If any person or persons shall be found trespassing in any meadow, garden, orchard, or fenced field, under cultivation and improvement, in any township or place in this Province, with a gun or otherwise, unless by leave of the owner or occu-

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pier, he or they, for every such offence, shall forfeit and pay a sum not exceeding ten shillings, nor less than five shillings, with costs; to be recovered on due proof before any Justice of the Peace of the county or district in which such meadow, orchard, garden, or fenced field shall lie; one half for the use of the owner or occupier of the land, and the other half for the poor of the township or place where the trespasses shall be committed.

As prosecutions under this cause may be considered chiefly in the nature of Civil Suits by the owners of the land, to recover compensation for the damage done, especially, as the subsequent Statute of the 4 & 5. G. 4. c. 8. provides, that upon a recovery, the same execution shall issue as in cases of "other debts," it does not seem requisite on a complaint of this offence, that the Justice should take any formal information in writing, but he may immediately issue a summons against the party complained of, a Form of which will be found at the end of the Title. The form of the writ of execution, and the other proceedings after judgment, will be the same as in cases of debt. See the observations at the close of the preceding division, which observations equally apply on a conviction for the present offence.

Directions.

VII. TRESPASSES, BY CUTTING DOWN, INJURING, OR CARRYING AWAY TREES.

By Sec. 20, of the last mentioned Act, "If any person or persons shall cut down or injure any tree or trees growing on the lands of any person or persons, within any township or place in this Province, or carry the same away, without his or their leave, he or they, for every such offence, shall forfeit and pay a sum not exceeding forty shillings, nor less than five shillings, for each and every tree so cut and carried away, with costs; to be recovered on due proof before any Justice of the Peace for the county or district in which such lands lie; one half for the use of the owner of the land, and the other half for the poor of the township or place where the trespass shall be committed.

Cutting down or injuring trees on private lands.

Sec. 21. If any person or persons shall cut down or injure any tree or trees, planted for ornament, or left growing on the sides of any of the public squares, streets, or public highways in this Province, he or they shall pay for each and every ornamental tree so cut or injured, forty shillings, to be applied by the person or persons having the care or management of such public square, street, or highway, in replacing or planting other ornamental trees on the sides thereof; to be re-

Cutting down or injuring ornamental trees on sides of public squares, &c.

GROUND.

G. 4, c. 32, passing in any other cultivation in this Province, by the owner or occu-

covered in the King's name, by such ways and means as are provided in and by the nineteenth Section of this Act. Provided always, that nothing herein contained shall extend, or be construed to prevent any Overseer of the highways, under the order and direction of the Court of General Sessions of the Peace, from removing and taking away any tree or trees, so planted or left growing for ornament as aforesaid, as may be injurious to the said public squares, highways, or streets."

Limitation of
certain fines to
be recovered
before one
Justice.

By the 2 W. 4, c. 30. 4. V. 157, it is enacted, That no fines or penalties exceeding in the whole the sum of five pounds shall be imposed under the twentieth Section of the aforesaid Act of the 3 G. 4, c. 32, by any Justice of the Peace against any person or persons whomsoever, for any one offence for which he or they shall be convicted. *Annual.*

Directions.

With regard to prosecutions under the before recited twentieth Section of the said Act of the 3. G. 4, c. 32, the same observations will apply as have been made at the close of the preceding division. As there observed, such prosecutions are to be considered chiefly in the nature of civil suits, and therefore, on a complaint of the offence mentioned in the said Section, a summons may be forthwith issued, similar to the Form at the end of the Title. The execution and subsequent proceedings will be the same as in cases of debts, and will be found under the Title,—Summary Trials.

As the prosecutions under the before recited twenty first Section of the same Act, are to be in the name of the King, they may be instituted on the complaint of the person having the care of the public ground, or highway, or of any other person who will inform and sue. It seems difficult to give any satisfactory directions as to the mode of prosecution and the Forms to be used for the recovery of penalties under this Section, as the prosecutions must be in the name of the King, and yet it is directed by the subsequent Statute, already referred to, of the 4 & 5 G. 4, c. 8, that in all cases where a recovery shall be had before one Justice, for any sum of money under the Act, of which this twenty-first Section is a part, "the same shall be levied in the same manner as in cases of other debts, and by the form of Execution now in use." The proceedings and the Forms, before conviction, may indeed be the same as in other cases of penalties to the King, and will be found under the respective Titles,—Information; Summons; Conviction. If the same Form of Execution is considered proper, as in cases of debts, such Form will be found under the Title,—Summary Trials.

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VIII. PROCEEDINGS AFTER JUDGMENT AGAINST A TRESPASSER.

By the 4 & 5 G. 4, c. 3 V. 182, In all cases where a recovery shall be had before one Justice of the Peace, for any sum of money by virtue of the Act of the 3 G. 4, c. 32, the same shall be levied and collected in the same manner as in cases of other debts recoverable before one Justice, and by the Form of Execution now in use; and the defendant or defendants shall be liable to be imprisoned for want of goods and chattels under such execution, as in cases of other debts as aforesaid. *Temporary.*

Penalties to be levied as in cases of debt.

Summons for cutting down and carrying away Trees; on the 3 G. 4, c. 32, § 20.

County of } To A. B., one of the constables of the township of — in the said county.

[Seal.]

You are hereby commanded to summon A. O. of — in the said county, yeoman, to appear before me, A. M., one of his Majesty's Justices of the Peace in and for the said county, on — next, the — day of —, at — o'clock in the forenoon of the same day, at my dwelling house at — in the said county, to answer to the suit of A. C. on the complaint of the said A. C. against the said A. O. for cutting down and carrying away the trees of the said A. C. off and from a certain tract or piece of land of the said A. C. situate at — in the said county, and which said trees were so cut down and carried away by the said A. O. as is alleged, between the — day of — last past, and the — day of — in this present year, contrary to the Statute in such case made and provided. Herein fail not, and make due return hereof to me, on or before the said day first mentioned. Given under my hand and seal, at — aforesaid, the — day of —, in the year —.

A. M., J. P.

Form of a Warrant to levy the Penalty, on a Conviction for Rescuing Cattle distrained for a Trespass; on the 3 G. 4, c. 32, § 5, and 3 W. 4, c. 3.

County of } To A. B., one of the constables of the township of — in the said county.

[Seal.]

WHEREAS, on the — day of —, in the year of our Lord one thousand eight hundred and —, A. O. of —,

in the said county, yeoman, was duly convicted by and before me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, for that he the said A. O. on the — day of —, at —, in the said county, did forcibly and unlawfully, and contrary to the Statute in such case provided, rescue and take away, from and out of the custody and possession of A. C. of —, in the said county, yeoman, certain cattle, to wit, two cows and one steer, which he the said A. C. had distrained for trespassing and doing damage on the land of him the said A. C. at —, aforesaid, and which cattle he the said A. C. was then and there driving and taking to the public pound at —, in the said county, to be there impounded for such trespass and damage, according to law; whereby the said A. O. hath forfeited, and hath by me, on the said conviction, been adjudged to pay the sum of — part thereof, to wit, twenty shillings, as and for the penalty imposed by the said Statute for the said rescue of the said cattle, and the remainder, being the sum of — for damages sustained by the said A. C. by reason of the said trespass by the said cattle, pursuant to the Statute in such case provided; And whereas the said A. O. hath had due notice of the said conviction, but hath hitherto altogether neglected and refused to pay, and hath not yet paid the said several sums, or any part thereof respectively; These, are therefore, in His Majesty's name, to command you to distrain the goods and chattels of the said A. O., and on the goods and chattels so distrained, to levy the said several sums; and if within the space of five days next after such distress by you made, the said several sums, making together the amount of —, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels, and out of the money arising by such sale, that you do pay the said penalty of twenty shillings, to the Overseers of the poor of the said township of —, in which the said offence was committed, for the use of the poor of the said township; and also the said sum of — to the said A. C. being for the damages as aforesaid, returning to him the said A. O. the overplus on demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if, upon diligent search by you made, you cannot find any goods or chattels of the said A. O. whereon to levy, for satisfying the said several sums, together with the fees on this warrant, you are hereby further commanded to take the body of the said A. O. and to commit him to the common gaol of the said county, there to remain until he shall pay the said several sums, making together the said amount of — and

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also the fees aforesaid, or until he shall otherwise be discharged from the said gaol by me the said Justice ; and for so doing this shall be your sufficient warrant ; and certify to me what you shall have done in the premises. Given under my hand and seal, at — aforesaid, the — day of — in the year above written.

A. M., J. P.

If the conviction is for breaking a pound, or delivering cattle out of the same by any indirect means, the foregoing warrant may readily be altered and filled up according to the facts of the case.

VAGRANTS.

- I. WHO SHALL BE DEEMED VAGRANTS, IDLE AND DISORDERLY PERSONS, &c.
 - II. OF THEIR APPREHENSION, EXAMINATION, AND PUNISHMENT.
 - III. NEGLIGENCE OF DUTY CONCERNING VAGRANTS, RESCUING THEM, OR ASSISTING THEIR ESCAPE, &c.
 - IV. PUNISHMENT FOR LODGING VAGRANTS.
 - V. CHARGES OF THEIR CONVEYANCE AND MAINTENANCE.
 - VI. APPEAL.
 - VII. TREBLE COSTS.
- I. WHO SHALL BE DEEMED VAGRANTS IDLE AND DISORDERLY PERSONS, &c.

By the 33 G. 2, c. 1, § 2. 1 V. 42, which relates only to the town of Halifax,—It shall be lawful for the Justices of the Peace in their General Sessions, or for any one Justice out of Court, to send and commit to the said house of correction, to be kept, governed and punished, according to the rules and orders thereof, all disorderly and idle persons, and such who shall be found begging, or practising any unlawful games, or pretending to fortune telling, common drunkards, persons of lewd behaviour, vagabonds, runaways, stubborn servants and children, and persons who notoriously mispend their time, to the neglect and prejudice of their own or their family's support, upon due conviction of any of the said offences or disorders.

Perpetual.

This clause is extended throughout the Province, by the 32 G. 3, c. 5. 1 V. 293, by which it is enacted, "That it shall be lawful for the said Justices in their Sessions, or for any one Justice out of Court, in any of the counties or districts in the Province, to commit to such work-houses, or houses of correction, all or any person or persons of the description mentioned in the second clause of the Act hereby altered and amended, in the manner specified in the said clause, which is hereby extended to the whole Province." *Perpetual.*

NOTE.—The work houses, or houses of correction mentioned in this clause, are buildings of that description, which the Justices in Sessions, and the Grand Jury, are authorised to provide in the several counties and districts. See Title,—Bridewell.

Soldiers, Seamen of the Navy, and certain others travelling without a Pass.

By the 14 & 15 G. 3, c. 5. 1 V. 186, All soldiers belonging to His Majesty's troops, in this Province, or seamen or mariners belonging to any of His Majesty's ships or vessels, who shall be travelling or wandering within the said Province, and shall not have a Pass from the commanding officer of the regiment, company, or ship or vessel to which they belong; and all idle and wandering persons, who shall not have a pass or testimonial from some Justice of the Peace, setting forth the place from whence such soldier, seaman, or mariner, or such other idle and wandering person shall have come, and the place to which they are to pass; every such soldier, mariner or seaman, or other person, shall be deemed idle and disorderly persons, and shall be proceeded against as herein after directed.

Who shall be deemed idle and disorderly persons, and how to be punished.

Sec. 2. All persons who run away, or threaten to run away and leave their wives or children upon any township, and all persons who unlawfully return to such township or place from whence they have been legally removed by order of two Justices of the Peace, without bringing a certificate from the township whereunto they belong; and all persons who not having wherewith to maintain themselves, live idle, and refuse to work for the usual wages; and all persons going about to beg alms, shall be deemed idle and disorderly persons; and it shall be lawful for any Justice of the Peace, to commit such offenders, (being convicted by his own view, or by confession, or by the oath of one credible witness,) to prison, or to the house of correction, there to be kept to hard labour for any time not exceeding one month.

NOTE. A lunar month of twenty eight days is here meant, which a month always means unless otherwise expressed. The

warrant of commitment must specify a definitive time, which must never exceed twenty-eight days. *See 5 Burn's, 492.*

II. OF THEIR APPREHENSION, EXAMINATION, AND PUNISHMENT.

By Sec. 3 of the same last mentioned Statute, "It shall be lawful for any person to apprehend offenders against this Act, and convey to some Justice of the Peace, the persons so apprehended, to be proceeded against as is hereinafter directed; and in case any constable or other such officer refuse or neglect to use his best endeavours to apprehend or convey to some Justice any such offender, it shall be deemed a neglect of duty, and he shall be punished as is hereinafter directed; and in case any other person, charged by any Justice so to do, refuse or neglect to use his best endeavours to apprehend and deliver to the constable or such other officer, or to carry such offender before some Justice, where no officer can be found, being convicted upon view, or by the oath of one witness, before a Justice, he shall forfeit ten shillings, to the use of the poor of the township; to be levied by distress and sale of goods by warrant from any Justice.

Apprehending
Offenders.

Sec. 4. Any one or more Justices of the Peace, on receiving information that deserters, or any idle and disorderly persons are in any place within his or their jurisdiction, shall issue his or their warrant to the constables to search for and apprehend such deserters, or idle and disorderly persons; and in case any person apprehended upon any such search, be charged before such Justice or Justices with being a deserter from His Majesty's Navy or Army, or an idle and disorderly person, or with suspicion of felony, (although no direct proof be then made thereof,) to examine such person, not only as to the place from whence he came, and where he was last legally settled, but also as to his manner of livelihood; the substance of which examination shall be put in writing, and be signed by the person so examined; and the said Justice or Justices shall sign the same, and transmit it to the next General Sessions of the Peace for the county, or Special Sessions for the district where such Justice or Justices reside, to be filed and kept on record; and if such person make it not appear to such Justice or Justices, that he is not a deserter, and that he has a lawful way of getting his livelihood, by labour or otherwise, or procure not some responsible housekeeper to appear to his character, and give security for his appearance before such Justice or Justices, at some other day, (in case the same be required,) to commit such person to some prison or house of correction,

Searching for
deserters and
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for any time not exceeding fourteen days, and in the meantime to order the Overseers of the poor of the township or place in which such person is apprehended, to insert an advertisement in the public newspaper, describing such suspicious person, and any thing found upon him or in his custody, and which he is suspected not to have come honestly by, and mentioning the place to which such person is committed, and specifying when and where such person is to be again brought before the said Justice or Justices to be examined; and if no accusation be then laid against him, such person shall be discharged, or otherwise dealt with according to law."

Binding out
strolling beg-
gars and other
disorderly
persons.

By the 26 G. 3, c. 6. 1 V. 256, All disorderly and beggarly persons, who shall be found strolling in any part of this Province, and who, on examination before three Justices of the Peace, shall not be able to shew any visible means whereby he or they obtain a sober and honest livelihood, it shall be lawful for such Justices, to commit such person or persons to the next gaol or bridewell, and to provide a master or mistress for such person or persons, and to execute an indenture or indentures in the usual form, to bind such person or persons to any master or mistress who shall appear to hire him or them, for such term of time, and on such conditions as such Justices in their discretion shall think fit, not exceeding seven years; and all persons receiving indentures as aforesaid, shall be entitled to the entire service and labour of the person or persons so indentured or bound, and may sell or assign the unexpired term of such servant or servants, and the assignee or purchaser shall be as fully entitled to the entire service and labour of such servant, as the person who assigned the same. Provided, such assignment shall be made in the presence of, and with the approbation of three Justices of the Peace, and security given, if required, not to carry such servant out of the Province. *Perpetual.*

Examination
as to place of
settlement.

By the 32 G. 3, c. 5, § 5. 1 V. 294, The Justice of the Peace committing any offender to a work-house, or house of correction, shall examine him or her, as to his or her place of settlement, if any, and note the same in the warrant of commitment. *Perpetual.*

Directions.

The Forms for the apprehension, examination, and commitment of a vagrant or disorderly person, under any of the beforementioned Acts, will be found at the close of the Title. The fine of ten shillings, mentioned in Sec. 3, first recited under this division, must be sued for and recovered in the same manner as in other ordinary cases of prosecuting for penalties, the requisite directions and Forms in which cases will be found under the respective Titles,—Information; Summons; Conviction; Distress.

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III. NEGLECT OF DUTY CONCERNING VAGRANTS, RESCUING THEM, OR ASSISTING THEIR ESCAPE.

By Sec. 5, of the beforementioned Act of the 14 & 15 G. 3, c. 5,—“ If any constable or other officer, or master of any house of correction, be negligent of his duty in the execution of this Act, or in case any person disturb the execution of this Act, or rescue any person apprehended, or passing by virtue thereof, or be assisting to his or her escape, and be convicted thereof, upon the oath of one credible witness, before one Justice of the Peace, where such offence is committed, the person so offending, for every such offence shall forfeit any sum not exceeding five pounds, nor less than ten shillings, to the use of the poor of the township ; to be levied by distress and sale of the offenders goods, by warrant from such Justice ; and if sufficient distress cannot be found, it shall be lawful for such Justice to commit the persons so offending to prison, or to the house of correction, there to be kept to hard labour for any time not exceeding two months.”

With regard to prosecutions for the recovery of penalties under the foregoing clause, the general directions will apply, and the general Forms can readily be made to serve, which are contained under the respective Titles,—Information ;mons ; Conviction ; Distress ; Commitment.

IV. PUNISHMENT FOR LODGING VAGRANTS.

By Sec. 6, of the last mentioned Act, “ If any person shall knowingly permit any deserter, or idle and wandering servant or vagabond, to lodge in his or her house, barn, or other outhouse, or buildings, and shall not apprehend and carry such deserter, or idle servant or vagabond, before some Justice, or give notice to some constable or other officer so to do, such person, being thereof convicted, either on confession, or upon oath of one credible witness, before a Justice, where such offence is committed, shall forfeit any sum not exceeding forty shillings nor less than ten shillings ; one moiety to the informer, and the other moiety to the poor of the township ; to be levied by distress and sale of goods, by warrant from such Justice ; and if any charge be brought upon any township or place by means of any such offence, the same shall be answered to the said township, by such offender, and be levied by distress and sale of goods ; and if sufficient distress cannot be found, such offender shall be committed to prison, or to the house of correction, by the Justice, for any time not exceeding one month.

Such directions as are suitable, and the requisite Forms,

which can be filled up so as to serve in prosecutions upon the foregoing clause, will be found under the respective Titles,—Information; Summons; Conviction; Distress; Commitment.

V. CHARGES OF THEIR CONVEYANCE AND MAINTENANCE.

By Sec. 3, of the same Act last mentioned, "In case any person, not being a constable, or officer, apprehend any deserter, or idle wandering servant, or other person, and deliver him to a constable, or convey him to a Justice, or if any constable so apprehend and convey such deserter or idle wandering servant, it shall be lawful for such Justice to reward any such constable, by making an order under his hand and seal on the Treasurer of the county, to pay ten shillings to the person so apprehending him, on producing such order and giving a receipt, and the Justices at the General Sessions shall allow the same to such Treasurer, in his accounts, upon his producing the vouchers aforesaid."

How offenders shall be maintained in Work House.

By Sec. 5, of the Statute already mentioned, of the 32 G. 3, c. 5, "When any person committed as above, shall be unable to labour, by reason of sickness or otherwise, or that his or her earnings shall be found insufficient for his or her support, if such person shall have a legal settlement in any township within the county where such work house may be situated, the expense of keeping and maintaining such offender, or such part thereof as may exceed the amount of his or her earnings, shall be defrayed by the township to which such offender may belong, and shall be paid by the Overseers of the poor of such township, on the certificate of the Clerk of the peace, by order of the Justices in their Sessions, that such expense has been fairly incurred; and in case such offender shall have no legal settlement in any township within the county, the expense of maintaining him or her, or the part thereof exceeding the amount of his or her earnings, shall be defrayed by said county; and the Justice of the Peace committing any offender, shall examine him or her as to his or her place of settlement, if any, and note the same in the warrant of commitment."

VI. APPEAL.

By Sec. 8, of the last mentioned Act, "Any person or persons aggrieved by any Act of any Justice or Justices of the Peace, out of Sessions, in or concerning the execution of this Act, may appeal to the next General Sessions of the peace for the county or district, giving reasonable notice thereof, whose order thereon shall be final."

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VII. TREBLE COSTS.

By Sec. 11, of the same Act, "Persons sued for any thing done in the execution of this Act, may plead the general issue, and give the special matter in evidence, and if the action terminates in their favour they shall have treble costs.

Order for Payment of Reward for apprehending a Vagrant ; pursuant to the 14 & 15 G. 3, c. 5. 1 V. 186.

County of } To A. T., Treasurer of the said county.

[Seal.] WHEREAS it duly appears unto me, A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, that A. O., an idle and wandering person, was found wandering and begging, [or as the case shall be,] in the township of — in the said county, which said A. O. was this day apprehended and brought before me by A. I. of —, yeoman, in order to be dealt withal according to law, I do hereby order you to pay unto the said A. I. as a reward for the apprehending and bringing before me the before named idle and wandering person, the sum of ten shillings, upon the said A. I. producing and delivering to you this order, and giving unto you his receipt for the same. Given under my hand and seal, at — in the said county, the — day of — in the year —.

A. M., J. P.

Warrant to Search for and Apprehend Deserters, and Idle and Disorderly Persons ; pursuant to the 14 & 15 G. 3, c. 5.

County of } To A. C., one of the constables of the township of — in the said county, and to the other constables of the said township.

[Seal.] WHEREAS information hath been given to me A. M. Esquire, one of His Majesty's Justices of the Peace in and for the said county, that certain deserters, or idle and disorderly persons, are lurking or wandering about within the said township of — in the said county ; you, and every of you, are hereby required, in His Majesty's name, commanding and taking to your assistance, sufficient men within the said township (who are hereby required to assist you accordingly,) to make a general search throughout the said township, for the finding and apprehending of deserters and idle and disorderly persons ; and such as you shall so find upon such search, you are to bring forthwith before me, or some other of His Majesty's Justices

of the Peace in and for the said county, to be dealt with according to law. Herein fail you not. Given under my hand and seal, at — in the said county, the — day of — in the year of our Lord —.

A. M., J. P.

Examination of a Vagrant.

County of) The examination of A. O. an idle and disorderly person, taken before me A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, the — day of — in the year of our Lord one thousand eight hundred and —.

The said A. O. on his said examination saith, that he was born at — in — [and so proceed to trace out the history of his life, so far as to ascertain the place in which he was last legally settled, and also as to his manner of livelihood.]

Taken and signed, the day and year first } A. O.
above written, before me, } his mark.
A. M., J. P. }

The Form of the conviction of any person as a vagrant, or an idle and disorderly person, can be framed from the general Form given under the Title,—Conviction.

Commitment of an Idle and Disorderly Person to a Prison, or House of Correction ; under the 14 & 15 G. 3, c. 5.

County of) To A. C. one of the constables of the township
Seal.] of — in the said county, and to the Keeper of
the House of Correction at — in the said
county.

WHEREAS A. O. was this day duly convicted before me A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, of being an idle and disorderly person, for that he on the — day of — in the year of our Lord — at — in the township of — in the said county, did go about from door to door, and did place himself in streets, highways, and passages, to beg and gather alms in the said township, in which the said A. O. then dwelt, [or as the circumstances of the case may be,] contrary to the form of the Statute in such case made and provided ; and the said A. O. not having made it to appear to me that he has a lawful way of getting his livelihood, by labour or otherwise, he the said A. O. was by me adjudged to be committed for the said offence to the house of correction at — in the said county, there to be

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kept to hard labour for — days, or one month, as the case may be, according to the form of the said Statute. These are therefore to command you the said constable, to convey the said A. O. to the said house of correction, and him to deliver to the keeper thereof, together with this warrant. And I do hereby command you the said keeper, to receive the said A. O. into your custody, in the said house of correction, and him there safely keep to hard labour, for the space of —. And for so doing this shall be your sufficient warrant. Given under my hand and seal, at — in the said county, the — day of — in the year of our Lord one thousand eight hundred and —.

A. M., J. P.

NOTE.—If there is no house of correction, the party may, by the terms of the Act, be committed to prison, that is, to the common jail. By the 32 G. 3, c. 5. 1 V. 293, The Justices in General Sessions, with the concurrence of the Grand Jury, may appropriate a part of the county or district jail as a house of correction or work-house, for which at large, see Title,—Bridewell. The period of commitment, according to the words of the Act, cannot in any case exceed one month. This means a lunar month of twenty eight days.

WAGGONS, see CARRIAGES.

WARRANT.

- I. SEARCH WARRANT.
- II. WARRANT TO APPREHEND.

I. SEARCH WARRANT.

A GENERAL warrant to search in all suspected places, is not good, but only to search in such particular places where the party assigns before the Justice his suspicion, and the probable cause thereof; for these warrants are judicial acts, and must be granted upon examination of the fact. Searches made by pretence of such general warrants, give no more power to the officer or party than what they may do by law without them.

Likewise upon a bare surmise, a Justice cannot make a

General
Search. War-
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warrant to break any man's house to search for a felon, or for stolen goods.

Searching suspected places.

But in case of a complaint, and oath made of goods stolen, and that the party suspects that goods are in such house, and *shews the cause of his suspicion*, the Justice of the Peace may grant a warrant to search in those suspected places mentioned in this warrant, and to attach the goods and the party in whose custody they are found, and bring them before him or some other Justice of the Peace, to give an account how he came by them, and farther to abide such order as to law doth appertain.

Time of Searching.

It is fit that the warrant express that search be made in the day time ; and though they are not unlawful without such a restriction, yet they are very inconvenient without it. But in case, not of probable suspicion only, but of positive proof thereof, it is right to execute the warrant in the night time, lest the offenders and goods also be gone before the morning.

To whom Warrant shall be directed.

Furthermore, such warrant ought to be directed to constables, or other public officer, and not to any private person ; though it is fit the party complaining should be present and assistant, because he knows his goods. 5 *Burn's*, 108, 9.

Entering house to search, the doors being open.

With regard to the *execution* of the warrant, whether the stolen goods are in a suspected house or not, the officer and his assistants, in the day time may enter, the doors being open, to make search, and it is justifiable by the warrant.

Breaking open doors, admittance being refused.

If the door be shut, and upon demand it be refused to be opened by them within, if the stolen goods be in the house, the officer may break open the door

If the goods be not in the house, yet it seems the officer is excused that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there, till search made : but it seems that the party that made the suggestion is punishable in such case ; for as to him, the breaking of the door is, in the event, lawful, or unlawful, to wit, lawful if the goods are there, unlawful, if not there.

On the return of the warrant executed, the Justice hath these things to do.

How goods found on search shall be disposed of

As touching the *goods* brought before him, if it appears they were not stolen, they are to be restored to the possessor ; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hand of the sheriff or constable, to the end the party robbed may proceed, by indicting and convicting the offender, to have restitution.

Proceedings as to party in whose possession goods are found.

As touching the *party* that had the custody of the goods ; if they were not stolen, then he is to be discharged ; if stolen, but not by him but by another, who sold and delivered them to him, if it appear that he was ignorant that they were stolen,

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he may be discharged as an offender, and be bound over to give evidence as a witness against him that sold them; if it appear he was knowing they were stolen, he must be committed or bound over to answer the felony. 5 Burn's, 109, 110.

Information of Goods being Stolen, and of Supposed Place of Concealment.

County of } THE information and complaint of A. I. of —
 } in the said county of —, yeoman, made on oath before me A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, the — day of — in the year of our Lord one thousand eight hundred and —.

The said A. I. saith, that within — days last past, the following goods of him the said A. I., to wit,—six silver table spoons, one plated ladle, and one pair of plated candlesticks, have, by some person or persons unknown, been feloniously taken, stolen, and carried away out of the house of the said A. I. at — aforesaid, in the county aforesaid; and that he the said A. I. hath just cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling house of A. O. of — in the said county, yeoman.

And thereupon he the said A. I. prayeth that justice may be done in the premises.

A. I.

Before me,

A. M., J. P.

Search Warrant thereon.

County of } To A. C. one of the constables of the township
 } of — in the said county.

[Seal.]

WHEREAS it appears to me A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, by the information on oath of A. I. of — in the county aforesaid, yeoman, that the following goods, to wit, six silver table spoons, one plated ladle, and one pair of plated candlesticks, of him the said A. I. have, within — days last past, by some person or persons unknown, been feloniously taken, stolen, and carried away out of the house of the said A. I. at — aforesaid, in the county aforesaid; and that the said A. I. hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling house of A. O. of — in the said county, yeoman. These are therefore, in the name of our Lord the King, to authorise and re-

quire you, with necessary and proper assistants, to enter in the day time into the said dwelling house of the said A. O. at — aforesaid, in the county aforesaid, and there diligently to search for the said goods ; and if the same or any part thereof shall be found upon such search, that you bring the goods so found, and also the body of the said A. O. before me or some other of His Majesty's Justices of the Peace in and for the said county, to be disposed of and dealt withal according to law. Given under my hand and seal, at — in the said county, the — day of — in the year of our Lord one thousand eight hundred and —.

A. M., J. P.

II. WARRANT TO APPREHEND.

Manner of apprehending the offender.

If a Justice see a felony or other breach of the peace committed in his presence, he may in his own person, apprehend the felon. And so he may by word, command any person to apprehend him, and such command is a good warrant without writing ; but if such felony or breach of the peace be committed in his absence, then he must issue his warrant in writing. Concerning such warrant, the following points are requisite to be known.

1. *For what causes it may be granted.*
2. *What is to be done previously to granting it.*
3. *How far it is grantable on Suspicion.*
4. *The Form of it.*
5. *Indorsement of a Warrant in another county.*

1. *For what causes it may be granted.*

THERE seems to be no doubt but that a warrant may be lawfully granted by any Justice, for treason, felony, or any other offence against the peace ; also it seems clear, that wherever a Statute gives to any one Justice a jurisdiction over any offence, or a power to require any person to do a certain thing ordained by such Statute, it impliedly gives a power to every such Justice to make out a warrant to bring before him, any person accused of such offence, or compellable to do anything ordained by such Statute, for it cannot but be intended, that a Statute giving a person jurisdiction over an offence, doth mean also to give him the power incident to all courts, of compelling the party to come before him.

Where a Summons is most proper.

But in cases where the King is no party, or where no corporal punishment is appointed, as in cases for servants'

wages, and the like, it seems that a Summons is the more proper process, and for default of appearance the Justice may proceed, and so indeed oftentimes it is directed by special Statutes.

Indeed, as a warrant deprives a man of his liberty, a summons only ought to issue and not a warrant, without information upon oath. 5 *Burn's*, 532, 3.

2. *What is to be done previously to granting it.*

It is convenient, though not always necessary, that the party who demands the warrant be first examined on oath, touching the whole matter whereupon the warrant is demanded, and that such examination be put into writing. 5 *Burn's*. 533.

3. *How far it is grantable on Suspicion.*

A JUSTICE of the Peace hath power to issue a warrant to apprehend a person suspected of felony, before he is indicted, and although the original suspicion be not in himself, but in the party that prays the warrant. For the Justice is a judge of reasonableness of the suspicion, and when he has examined the party accusing, touching the reasons of his suspicion, if he find the causes of suspicion to be reasonable, it is now become the Justice's suspicion as well as the party's. Yet since the undue execution of this power of the Justice may prove so highly prejudicial to the reputation, as well as the liberty of the party, a Justice cannot well be too tender in his proceedings of this kind, and seems to be punishable not only at the suit of the King but also of the party grieved, if he grant any such warrant groundlessly, and maliciously, without such a probable cause as might induce a candid and impartial man to suspect the party to be guilty.

But a general warrant, upon a complaint of robbery, to apprehend *all persons suspected*, and to bring them before a Justice, hath been ruled void, and false imprisonment lies against him that issues such a warrant. 5 *Burn's*, 533—4.

4. *The Form of it.*

It is safe, but perhaps not necessary, in the body of the warrant, to shew the place where it was made; yet it seems necessary to set forth the county in the margin, at least, if it be not set forth in the body.

It may be directed to the sheriff, bailiff, constable, or to any indifferent person by name, who is no officer, for the

Place, where made.

To whom to be directed.

Justice may authorise any one to be his officer whom he pleases to make such ; yet it is most advisable to direct it to the constable of the precinct wherein it is to be executed, for no other constable, and much more no private person, is compellable to serve it.

But in the case of an Act of Parliam^t it, it is said, that if the Act direct that a Justice shall grant a warrant, and do not say to whom it shall be directed, by consequence of law it must be directed to the constable, and it cannot be directed to the sheriff, unless such power be given in the Act.

In whose
name to be
made.

The warrant may be styled in divers manners ; as,—1. In the name of the King, and yet the teste must be under the name of the Justice that grants it out. Or,—2. It may be styled or made only in the name of the Justice. Or,—3. It may be made without any style, and only under the teste of the Justice, or only subscribed by him.

Wheresoever the warrant is made in the King's name, there it ought to be directed to all peace officers, for the King is made a party. And so it may be done in all other warrants, especially for felony, or for the peace and good behaviour, because it is the service of the King.

Cause of
granting War-
rant to be
specially stat-
ed therein.

Regularly, the warrant, especially if it be for the peace or good behaviour, or the like, where sureties are to be found or required, ought to contain the special cause and matter whereupon it is granted, to the intent that the party upon whom it is to be served, may provide his sureties ready, and take them with him to the Justice, to be bound for him ; but if the warrant be for treason, murder, or felony, or other capital offence, or for great conspiracies, rebellious assemblies, or the like, it hath been said, that it need not contain any special cause, but the warrant of the Justice may be to bring the party before him, to make answer to such things or matters generally, as shall be objected against him on the King's behalf.

Name of party
must be men-
tioned in the
Warrant.

The warrant ought regularly to mention the name of the party to be attached, and must not be left in general, or with blanks to be filled up by the party afterwards.

It may issue to bring the party before the Justice who granted the warrant, specially, and then the officer is bound to bring him before the same Justice, but if the warrant be to bring him before any Justice, then it is in the election of the officer to bring him before what Justice of the county he thinks fit, and not in the election of the prisoner.

Day and year
of making
must be stated

It ought to set forth the day and year wherein it is made, that in an action brought upon an arrest by virtue of it, it may appear to have been prior to such arrest ; and also in case where

the Statute directs the prosecution to be within such a time, that it may appear that the prosecution is commenced within such time limited; likewise where a penalty is given to the poor of the parish where the offence shall be committed, or the like, it ought to specify the place where the offence was committed.

Finally, it ought to be under the hand and seal of the Justice who makes it out.

The warrant of a Magistrate is not returnable at any particular time, but continues in force until it is fully executed and obeyed, though it were seven years, provided the Magistrate so long live.

A warrant to arrest the party, "to the end that he may become bound, &c. to appear at the next Sessions, &c." means the next Sessions after the arrest, and not after the date of the warrant. Therefore the officer executing it, may justify an arrest after the Sessions next ensuing the date of the warrant. 5 *Burn's*, 534—7.

Must be under hand and seal of Justice.

Duration of Warrant.

Arrest may be after the Sessions next ensuing the date of the Warrant.

General Form of a Warrant to Arrest.

County of } To A. C. one of the Constables of the township of —, in the said county of —, and to all other peace officers, respectively, in the said county.
[Seal.]

FORASMUCH, as A. I. of —, in the said county, yeoman, hath this day made information and complaint upon oath, before me A. M., Esquire, one of His Majesty's Justices of the Peace in and for the said county, that A. O. of —, in the said county, labourer, on the — day of —, instant, at —, in the said county, [here state the crime or offence, as charged in the information.] These are therefore to command you, in His Majesty's name, forthwith to apprehend and bring before me or some other of His Majesty's Justices of the Peace in and for the said county, the body of the said A. O., to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, at —, in the said county, the — day of —, in the year of our Lord one thousand eight hundred and —

A. M., J. P.

5. Indorsement of a Warrant in another County.

By the 54 G. 3, c. 15. 2 V. 122, If any person against whom a warrant shall be issued, be out of the jurisdiction of the Justice or Justices granting the warrant, any Justice or

Justices of the county, district, or place where such person shall escape, go into, be, or reside, upon proof on oath of the hand-writing of the Justice or Justices granting such warrant, shall endorse his or their name or names thereon ; which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, to execute the same in such other county, district, or place, and to carry the offender before the Justice who indorsed the warrant, or some other Justice or Justices of that county or place, and in case the offence be bailable, and the offender be ready and willing to give bail for his appearance at the next sitting of the Supreme Court, or next General Sessions for the county or place where the offence was committed, such last mentioned Justice or Justices shall take bail accordingly, and shall deliver the recognisance, together with the examination or confession of the offender, and all other proceedings relating thereto, to the constable or other person apprehending such offender, who shall (under the penalty of ten pounds,) deliver over the same to the Clerk of the Supreme Court, or Clerk of the Peace of the county or district where the offender is required to appear. And if the offence be not bailable, or the offender shall not give bail to the satisfaction of the Justice or Justices before whom he is brought, the constable or other person aforesaid shall carry the offender before a Justice of the proper county or place where the offence was committed, there to be dealt with according to law. *Perpetual.*

Before whom
party shall be
carried.

The Justice indorsing the warrant, may (if he think fit,) order the party, according as he shall appear bailable or not bailable, upon the face of the warrant, to be brought before himself, or some other Justice or Justices of that county, or to be carried back into the county from whence the warrant issued. It has been determined, that proof on oath of the hand-writing of the Justice who granted the warrant, made before the Justice of any other county to whom the same was tendered for indorsement, is sufficient to oblige him to indorse the same for execution within his jurisdiction. The Justice by whom the original warrant is issued has a discretion to exercise upon the matter submitted to him ; but the magistrate who merely indorses the warrant of another, is not answerable for the legality of it, which remains at the hazard of him who first granted it. 5 *Burn's*, 537-8.

The Indorsement may be in the following Form.

County of) FORASMUCH as proof upon oath hath been made
) before me, A. R., Esquire, one of His Majesty's

such person
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Justices of the Peace in and for the said county of — that
the name of A. M. is of the hand writing of the Justice of
the Peace within mentioned; I do hereby authorize A. C.
who bringeth to me this warrant, and all other persons to
whom the said warrant is directed, to execute the same within
the said county of —. Given under my hand, the — day
of — in the year —.

A. R. J. P.

Concerning the execution of this warrant, see Title,—
Arrest.



WEIGHTS AND MEASURES.

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By the 32 G. 2, c. 21. 1 V. 32, " All weights and mea-
sures used in this Province, shall be according to the Standard
of the Exchequer of England; and the Treasurer of the Pro-
vince, as soon as may be, shall procure a sett of measures,
long, liquid, and dry, and a sett of brass weights and scales,
and until such weights and measures shall arrive, the weights at
His Majesty's Ordnance store shall be the Standard. And the
clerks of the market for each town shall procure therefrom a
sett of weights according to such standard, which shall remain
with them as assay weights, and shall be marked with the let-
ters GII: R."

Standards of
Weights and
Measures.

Sec. 2. Every inhabitant of each town, respectively,
making use of weights and measures in the sale of any com-
modity, shall in one week after public notice given by such
clerks respectively, bring, or cause to be brought, their
weights and measures to be assayed; for each of which assay
he shall have two pence for his trouble, and no more; and the
said clerk shall cause such weights and measures to be brand-
ed or stampd with the initial letter of the town where such as-
say shall be made. And whosoever shall thenceforward sell or
vend any commodity by weights or measures not so branded
or marked, shall forfeit for every such offence, twenty shil-
lings, on due conviction thereof before any one Justice of the
Peace for the county wherein the offence shall be committed,
to be levied by warrant of distress and sale of the offender's
goods.

Assaying
Weights, &c.

Penalty for
Selling by
Weights or
Measures
not marked.

Sec. 3. The said clerks shall inspect all weights and
measures, and for that purpose, once in three months, or of-
tener if they see cause, shall visit every inhabitant selling pub-
licly by weights and measures, and shall have full power and

Inspecting
Weights, &c.

g Form.

hath been made
His Majesty's

Penalty for
Selling by
Weights, &c.
less than the
Standard.

No goods ex-
cept Hay to
be sold by
steelyards.

Clerks of Mar-
ket to inspect
and assay
Weights,
Measures, &c.

authority to seize all such, not stamped or branded as aforesaid, and may assay, and mark, and dispose of the same for their use, as a satisfaction for their trouble therein ; and if any person shall hereafter be convicted of selling by weights and measures less than the standard hereby established, he shall forfeit the sum of ten pounds ; to be recovered by bill, complaint, or information, in any Court of Record. *Perpetual.*

By the 33 G. 2, c. 6. 1 V. 50, No provision or goods of any kind shall be sold within the Province by steelyards, (except hay,) under the penalty of twenty shillings, to be paid by the person or persons offending, for each and every default, and to be recovered before any of His Majesty's Justices of the Peace.

Sec. 2. The Clerks of the Market are empowered to inspect all beams and scales, weights and measures, as well of brass as of other metals, and also the steelyards used for weighing hay, once in every three months, or oftener as they shall see cause ; not only those used by the inhabitants selling publicly by weights and measures, but also those used on board any ships or vessels, lying at any wharves, or at anchor in any harbour, or by any person or persons selling as aforesaid, within the Province ; and the same to assay and stamp, and dispose of as in said Act is directed, and under the same penalties ; and all masters of ships or vessels, refusing admittance to the said Clerks of the Market, shall be liable to the same penalties as any inhabitant, in manner and form as prescribed by the said Act, and to be recovered in the same manner. *Perpetual.*

NOTE. The Act here referred to, is the previously recited Act of the 32 G. 2, c. 21.

Appropriation
of Fines, &c.

By the 7 G. 3, c. 4. 1 V. 126, made to explain and amend the foregoing Acts, it is enacted,—“ That for the future, all fines and forfeitures incurred on the said Acts shall be applied, one half to the Clerks of the Market or informer, and the other half to the poor of the town where the offence shall be committed.” *Perpetual.*

Directions.

The proceedings for the recovery of the penalty of twenty shillings, imposed by the first of the before recited Acts, will be the same as in other ordinary cases of prosecutions before Justices to recover penalties, and are described, and the requisite Forms, which may readily be filled up so as to serve, are given under the respective Titles,—Information ; Summons ; Conviction ; Distress. The same will be the case with regard to the other penalty of twenty shillings, for selling

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by steelyards, until after conviction. As no final Process is mentioned for levying or enforcing payment of this penalty, no such process of any kind can legally be issued by the Justice.

WELLS AND PUMPS.

By the 36 G. 3, c. 9. 1 V. 379, The inhabitants of towns, in their town meetings, may vote sums of money for sinking wells and furnishing pumps, and keeping the same in repair; which monies shall be assessed and collected in the same manner as poor rates, and shall be paid into the hands of the Firewards, who shall apply the same for the aforesaid purposes, and shall account for the expenditure to the next General Sessions, and pay over the balance to their successors. Persons who think themselves overrated, may appeal to the next General Sessions, where the matter shall be finally determined as may be judged equitable. If the inhabitants of any town neglect to vote money for the aforesaid purposes, the General Sessions, on the complaint of any three inhabitants, may amerce such town in the sum requisite, which shall be assessed, collected, and paid in the manner aforesaid.

Raising money for making and repairing Wells and Pumps.

Sec. 3. Whoever shall be found guilty of wilfully injuring or destroying any pump or well, in any of the public streets or lanes of any of the towns of the Province, shall, on conviction thereof before any two Justices of the Peace, forfeit and pay a sum not exceeding five pounds, nor less than forty shillings; the one half thereof to the prosecutor, and the other half to the Firewards of the town wherein such offence shall be committed, for the purpose of repairing such pumps and wells within such town; and in case the party so convicted, shall be unable to pay the fine imposed, it shall be lawful for such Justices to commit the offender to the house of correction, there to be put to hard labour, for a space not exceeding ten days nor less than five days. This Act is made perpetual by the 48 G. 3, c. 24. 2 V. 23.

Injuring or destroying Wells or Pumps.

The proceedings for the recovery of the penalty under the foregoing Statute, will be the same, until conviction, as in other cases of prosecuting before Justices to recover penalties, and will be found, together with Forms which can readily be made to answer, under the respective Titles,—Information; Summons; Conviction. As a warrant of distress to levy the penalty is not mentioned, it would rather seem that no such warrant can be issued, notwithstanding the words of the Act, concerning the commitment of the party, "on his being unable to pay."

Directions.

He should however be notified of the fine imposed, and the same should be demanded from him, and on neglect of payment, the warrant of commitment may be issued. A suitable Form thereof, may be easily framed from the general Form under the Title,—Commitment ; or from the Form of a commitment to the house of correction, under the Title,—Vagrant, and also under other Titles.



WIFE.

Wife committing crime in company with or by coercion of her husband.

A WIFE is so much favoured in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for a bare theft in company with, or by coercion of her husband. But if she commit a theft of her own voluntary act, or by the bare command of her husband, or be guilty of treason, murder, or robbery, in company with or by coercion of her husband, she is punishable as much as if she were sole, because of the odiousness and dangerous consequences of these crimes. And the coercion of the husband is only a presumption till the contrary appear, for if upon the evidence it can clearly appear, that the wife was not drawn to it by the husband, but that she was the principal actor and inciter of it, she seems to be guilty as well as the husband.

Is liable for offences not capital.

Generally, a married woman shall answer as much as if she were single, for an offence, not capital, against the common-law or Statute ; and if it be of such a nature that it may be committed by her alone, without the concurrence of her husband, she may be punished for it without the husband, by way of indictment. But if a wife incur the forfeiture of a penal Statute, the husband may be made the party to an action or information for the same, (as he may generally to any suit for a cause of action given by his wife,) and shall be liable to answer what shall be recovered thereupon.

Wife cannot commit felony in taking her husband's goods.

A wife herself cannot feloniously take her husband's goods ; and though she take her husband's goods and deliver them to a stranger, yet it is no felony in the stranger. But she may be guilty of felony in taking her husband's goods from the possession of another party.

Is punishable for a trespass or other wrong.

If she shall commit any riot, or do any trespass or other wrong, she is punishable for it, and if she be indicted for such cause, without her husband, she only shall answer and be party to the judgment ; and in such case the fine set upon the wife shall not be levied upon the husband ; and as for imprisonment or other corporal pain, it shall be inflicted upon the

wife only, and not upon the husband for his wife's act or default.

If a woman who is a servant shall marry, yet she must serve out her time, and the husband cannot take her out of her master's service.

Husband and wife cannot be witnesses for one another, nor regularly against one another.

But a wife may demand sureties of the peace against her husband, threatening to beat her outrageously, and a husband also may have it against his wife. And in other criminal cases, the wife may be a witness against her husband, where she is the party grieved, but not in civil cases.

A wife cannot be bound herself by recognisance, but her sureties only. *5 Burn's, 557 to 561.*

Female Servant marrying shall serve out her time.

Wife may demand sureties of the Peace against her husband, and he against her.

WITNESSES.

By the 8 & 9 G. 3, c. 2. 1 V. 147, When any poor person shall appear on recognisance in any court to give evidence against another accused of any grand or petit larceny, or other felony, it shall be in the power of the Court, at the prayer and on the oath of such person, and on consideration of his circumstances, in open Court to order the Treasurer of the county in which the offence shall have been committed, to pay unto such person, such sum of money as to the said Court shall seem reasonable, for his time, trouble, and expense; which order the proper officer of such Court shall make out and deliver to such person, upon being paid for the same, six pence and no more; and such treasurer shall, upon delivery of such order, forthwith pay such sum to the said person, or other person authorised to receive the same, and shall be allowed such sum in his accounts.

Poor Witnesses in cases of felony shall be allowed their fees, from the county Treasurer.

Sec. 4. In counties where no county treasurer shall have been chosen, or in case such treasurer shall not have any money in his hands to pay the sum so ordered for the attendance of witnesses, the same shall be paid out of the Treasury of the Province. *Perpetual.*

By the 25 G. 3, c. 2. 1 V. 240, When it is found necessary to summon any person or persons as witness or witnesses, to attend and give evidence in any trial, whose place of residence shall be five miles or upwards from the place where the Court at which such trial is to be had or held, it shall be lawful for the Justices in the several counties, to issue a summons for such person or persons to attend as a witness

Witnesses residing more than 5 miles from the Court, may be summoned by a Justice.

or witnesses at the trial of the said causes, which Summons shall be in the form following :

You A. W. are summoned personally to be and appear before — at — on the — day of — next, then and there to give evidence in a cause depending in said Court, between A. B. plaintiff, and C. D. defendant, and not to depart without leave of said Court ; and in this you are not to fail, under penalty of being found guilty of a contempt of said Court. Witness — one of His Majesty's Justices of the Peace for the county of — this — day of — A. D. —."

Punishment
of Witnesses,
for not attend-
ing according
to Summons.

Sec. 2. When any person or persons shall be summoned to give evidence upon the trial of any issue between party and party, or in behalf, or against any prisoner upon trial, and such person or persons shall neglect to give his or her attendance at the time and place mentioned in such summons, (not having any just or reasonable cause therefore, to be allowed of by the Court, or Justice or Justices before whom the trial shall be,) or wilfully withdraw himself, or herself, before sworn, or shall refuse to give his or her evidence, in every such case, the party so offending shall be liable to such pains and penalties as such person or persons would have been liable to, if he or they had acted in contempt of a subpoena issued out of the Court at which such person or persons' attendance was so required.

Witness to be
paid his fees
before giving
evidence.

Sec. 3. Provided, that no person shall be obliged to give evidence in any cause, before he or she be paid his or her reasonable charges for attendance, to be allowed of and ordered by the Court, Justice or Justices. *Perpetual.*

The following general Form will serve as a Summons for a witness, on informations of felony,—in prosecutions on penal Statutes, and in other cases, in general, before Justices.

County of } To A. C., one of the constables of the town-
ship of — in the said county.

[Seal.]

WHEREAS information hath been made before me A. M. Esquire, one of His Majesty's Justices of the Peace in and for the said county of —, that — [here set forth the substance of the complaint, as stated in the information ;] and that A. W. of — in the said county, yeoman, is a material witness to be examined concerning the same ; these are therefore to require you to summon the said A. W. to appear before me, at — in the said county, on — the — day of — at the hour of — in the — of the same day, to testify his know-

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ledge concerning the premises. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord —.

A. M., J. P.

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WOODS.

By the 1 G. 3, c. 5. 1 V. 67, The Justices in the several counties, annually, in their Quarter Sessions to be held in March, shall give in charge to the Grand Jury, to settle such regulations as they may judge most proper and convenient to be observed by the inhabitants within the respective counties, for preventing damage by setting fire to and burning the woods, underbrush, or marsh lands, at unseasonable times, with as little prejudice as possible to the clearing of lands in the new settlements, and the said Justices, in their said Sessions, shall settle and approve of such rules and regulations for the purposes aforesaid, as to them shall appear most proper and convenient to serve for the year then next ensuing, and shall also settle and appoint such pains and penalties to be inflicted upon persons who shall neglect or refuse to obey such rules and regulations, as to them shall appear to be just and equitable. Provided, that such pecuniary penalties to be inflicted shall not exceed the sum of five pounds; and that the prosecution for any offence against this Act be commenced within three months after the offence committed. *Perpetual.*

Regulations to be made in Sessions concerning fires in clearing land.

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WORK-HOUSES, see—BRIDEWELL.

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WRECK.

By the 41 G. 3, c. 14. 1 V. 446, it is enacted, That all wrecked, stranded, or abandoned ships or vessels, and shipwrecked goods of every kind whatsoever, whether appertaining to the vessel, cargo, or otherwise, which shall be forced on shore, wrecked, or stranded upon the coasts of this Province, or of the Island of Sable, or which shall be found floating in the rivers, bays, or harbours thereof, or so near to the coast thereof, as to be within soundings, shall be carefully preserved for the right owners; and the persons finding the same

Securing wrecked vessels and goods.

shall give immediate notice to any one or more of the several officers hereafter named, viz. to the sheriff of the county, coroner, officers of the customs, officers of impost and excise, or Justices of the Peace, whichever of them, or either, or any of them shall be nearest at hand, and such officer or officers, or a majority of them, if more than one shall attend, shall immediately take all necessary measures for securing and preserving of all such ships, vessels, goods, effects, and property of every kind, and shall proceed therewith as hereinafter directed.

Plundering or
destroying
wrecked ves-
sels or goods.

If any person shall plunder, steal, take away, or destroy, any wrecked, stranded, or abandoned vessels, or any kind of goods, wares, or merchandise, which shall be wrecked, lost, stranded, or cast on shore, on the coasts of this Province, or of the Island of Sable, or shall steal or take away any kind of shipwrecked or lost goods, wares or merchandise, which shall be found floating in the rivers, bays, or harbours of this Province, or contiguous to the shores thereof, except so far as may be necessary to bring the same to the shore, for security, or shall plunder, steal, or take away any of the tackle, apparel, furniture, or provision of any vessel, so found wrecked, stranded, or cast away as aforesaid, (whether there be any living creature on board such vessel or not,) or shall beat, wound, or otherwise wilfully obstruct any person endeavouring to save his or her life from such vessel, or shall put out any false light, with intention to bring any vessel into danger, in all such cases the person or persons so offending shall be deemed guilty of felony, and being lawfully convicted thereof, shall suffer death as in cases of felony, without benefit of clergy.

Injuring or
obstructing
person endeav-
ouring to
save property.
Putting out
false lights.

Stealing
wrecked
goods under
40 shillings.

Sec. 2. Provided always, that when any goods or effects which are under the value of forty shillings, shall be lost, stranded or cast on shore as aforesaid, if the same be stolen without any circumstances of cruelty, outrage, or violence, the person convicted of such stealing shall suffer only the punishment which the laws direct in cases of petit larceny.

Searching for
stolen ship-
wrecked
goods, and
securing the
offender.

Sec. 3. All and every of the Justices of the Peace throughout the Province, shall, upon information made before him or them on oath, that any kind of lost or shipwrecked goods as aforesaid, or anything belonging to any vessel lost or stranded as aforesaid, has been carried away or concealed in any place whatsoever, such Justice or Justices shall issue his or their warrant or warrants, for searching of all places where the same shall be suspected to be concealed, and if any such goods be found in the custody or keeping of any person or persons whatsoever, who shall appear to such Justice or Justices to have wilfully concealed, or kept such goods from being found, with a fraudulent intention, it shall be lawful for such Justice or Justices

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to commit such person or persons to the county gaol, there to remain until he, she, or they may be delivered therefrom by due course of law.

Sec. 4. The officers herein before named, or any one or more of them, when any vessel shall be in danger of shipwreck, or when any vessel or goods shall be wrecked or cast on shore, or shall be discovered floating as aforesaid, to require and command as many men of the neighbourhood as shall be thought necessary, to assist in the preservation of the lives of the people on board such vessel, and to preserve and save the vessel's goods, or whatever else may be wrecked or lost, or in danger thereof; and such officer or officers may, if necessary, command the master or principal officer of any vessel which may be at anchor near to the place where such assistance shall be required, to furnish assistance with his or their boats, and as many men as they can conveniently spare; and all persons, so ordered by such officer or officers to assist for the purposes aforesaid, are required to give their attendance accordingly, and to yield ready obedience to the orders which such officer or officers shall from time to time give for the accomplishment of the purposes aforesaid; and if any person or persons, when commanded by such officer or officers to give his or their attendance for the purposes aforesaid, or when notified so to do by a person appointed by such officer or officers for that purpose, shall refuse to attend and give his assistance, or shall disobey any of the lawful orders which such officer or officers shall give to such person or persons concerning the premises, any one Justice of the Peace, on complaint made thereof, on oath, shall commit such offender or offenders to the county gaol, for trial, unless he or they shall give good security to appear and answer to such complaint, at the next General Sessions of the peace for the county or district wherein such offence shall have been committed; and if such person or persons, shall, on information to be exhibited against him or them, be found guilty, he or they shall each pay a fine not exceeding fifty pounds, or be imprisoned in the county gaol for a term not exceeding six months, at the discretion of the Justices of said Sessions, and according to the nature and circumstances of the offence.

And for the encouragement of such persons as give assistance to such vessels so in distress, or to the people or crew thereof who may be in danger, or who shall assist in the securing and preserving for the right owners, any property whatsoever, which shall be wrecked, lost, cast on shore, or found floating as aforesaid, such persons shall within thirty days after the service performed, be paid a reasonable reward for the

Commanding assistance to preserve persons and property, and punishment of such as refuse it.

Rewarding persons who assist at wrecks, or in securing property.

same, by the commander, principal officer, mariners, seamen, or owners of the vessel, goods, or property preserved as aforesaid ; and the goods and property so saved, or in default thereof, the vessel or her materials, shall remain and be held in the custody of any or either of the herein before named officers, until such charges be paid, and the officer or officers, and all others who shall aid in performing such service, shall be reasonably gratified for the assistance which he or they have actually and fairly given concerning the premises. Provided always, that no person shall be entitled to receive any gratification for his service, if during the time thereof, he shall have been guilty of dishonesty, misbehaviour, or disorderly conduct of any kind ; and unless the officer or officers, if any such shall attend and direct the making of such salvage, shall certify the services actually performed by each and every person who shall demand gratification ; and the quantum of such reward or gratification to be paid to the officer or officers, person or persons claiming the same, shall be adjusted and settled on a reference to be made to three of the neighbouring Justices of the Peace, to be mutually chosen by the parties ; which Justices shall adjust the quantum of the reward or gratification to be paid to the persons employed in making such salvage, and such adjustment shall be binding to all parties, and shall be recovered in an action at law to be brought in any Court of Record, by the parties to whom the same shall be allotted.

How goods saved shall be disposed of, when no person appears to claim, and to pay expenses.

In case it shall happen that no person shall appear to make his claim, to all or any of the goods that shall be saved, then the officer or officers in whose custody the same shall be, shall sell so much thereof as will be sufficient to pay the sum or sums of money adjusted and allowed for the salvage thereof, with incidental charges incurred ; or if the goods are in danger of perishing, or of being otherwise lost by delay, then the whole to be sold ; and shall put some principal officer of His Majesty's customs, or some other responsible person, in case no such officer is present to receive the same, into immediate possession of the goods or money remaining after payment of the salvage and costs aforesaid, first taking an account in writing of the said goods or money, to be signed by the officer of the customs, or person receiving the same ; and if the said money or goods shall not be legally claimed within twelve months next ensuing, by the owner thereof, such of the goods as may be on hand shall be forthwith sold at public auction, and the money arising from such sale, reasonable charges being first deducted, with a fair and just account of the whole, shall be paid into the Treasury of this Province, there to remain for the benefit of the rightful owner, when appearing, who,

upon affidavit or other proof made of his or their right or property therein, to the satisfaction of the Chief Justice, or one of the Justices of the Supreme Court, shall, upon his order, receive the same out of the Treasury.

Sec. 5. Provided always, that it shall not be lawful for any person whatsoever, under pretence of making salvage under the authority of this Act, or under any pretence whatsoever; to meddle or interfere with any kind of property, if there be found any person in the charge or custody thereof, unless such person shall require his assistance; in which case notice shall be immediately given to one or more of the officers herein before named, that such assistance is wanted, and it shall be lawful for the master or other person or persons having charge of any vessel or property so wrecked, or in distress, or for the officer or officers who shall come to his or their assistance, to repel by force any person who shall dare to enter such vessel, or to meddle with such property without his or their consent or orders; and the person who shall molest or disturb those having charge of such property, and employed in making salvage thereof, or who shall molest, insult, or disturb the officer or officers herein before named, and those acting under his and their authority, in and about the premises, such person, if convicted thereof in the Supreme Court, or General Sessions of the Peace for the county or district, shall be punished as for a misdemeanor.

Sec. 7. If any person shall make, or assist in making, any hole in a vessel, whether in distress or otherwise, with an intention, wilfully to increase the distress, or to produce the loss or destruction of a vessel, not being in distress, or shall steal, take away, or destroy, or wilfully render useless, the pump of any vessel, whether in distress, or not, if done with a wilful intention to produce the loss or danger of such vessel, or shall wilfully do any other thing, tending to produce the immediate loss or destruction of any ship or vessel whatsoever, every such person shall be, and is hereby made guilty of felony, without benefit of clergy.

Sec. 9. The Clerk of the Peace on the first day of every General Sessions, in every county and district, shall immediately on the opening of the Court, and before the Grand Jury shall depart from the Court, distinctly read aloud, every matter in this Act contained, and for every neglect of doing so, he shall forfeit twenty shillings, to the person who shall inform against him, the same to be recovered on conviction before such Court of General Sessions. This Act is made perpetual by the 1 & 2 G. 4, c. 19. 3 V. 111.

The proceedings before Justices, on informations for en-

Property in charge of another not to be interfered with.

Persons endeavouring to destroy, or cause the loss of vessels, to suffer death.

Act to be read by the Clerk of the Peace.

Directions.

deavouring to produce wrecks,—for stealing wrecked goods, and, for other felonious acts, mentioned in the foregoing Statute, will be the same as in other cases of felonies, and will be found, with the requisite Forms, under the respective Titles,—Information ; Warrant ; Examination ; Commitment. Justices cannot let to bail a party charged with any of the said felonies, but must commit him, for trial in the Supreme Court, and send thither the examinations taken.

With regard to the offence of refusing to attend and render assistance towards preventing wrecks, preserving lives of shipwrecked persons, or saving wrecked goods, on complaint being made to any Justice, he must take the same on oath, in the form of an affidavit, stating the facts, or according to the general Form under the Title—Information,—setting forth therein the facts of the case. The requisite warrant in such case can be framed from the general Form under the Title—Warrant,—filling it up according to the facts stated in the Information. When the party charged with this offence is brought before the Justice, if he offer sufficient bail, they must be bound with him, in the manner, and according to the Form given under the Title,—Recognisance. If he neglect to furnish such bail, he must, as directed by the Act, be committed to gaol, to take his trial at the next General Sessions. The commitment can be readily framed from the general Form under the Title,—Commitment.

Order of Justices, for payment of Reward to persons rendering assistance to Vessels in distress, and at Wrecks ; pursuant to the before recited Act.

County of } THE order and award of A. M., A. N., and
 } A. R., Esquires, three of His Majesty's Justices
 of the Peace in and for the said county, made the — day of
 —, in the year of our Lord one thousand eight hundred and
 —. Whereas it has appeared unto us the said Justices,
 upon the complaint and claim of A. C. of — in the said
 county, mariner, that on the — day of — last past, at —
 in the said county, the ship or vessel called the — of —
 in the — A. T. master, bound from — in — to —
 in — was stranded at — in the said county of — and
 that he the said A. C. with great labour and expense, did dur-
 ing — days, assist in saving the crew, landing and preserving
 the cargo, and getting the said vessel from the shore where
 stranded, [or as the nature of the service may have been.] And
 whereas the said A. T. the said master, [owner or owners, or
 his or their agent, as the case may be,] together with the said

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A. C. are now present before the said Justices, for the purpose of having the claims and demands of the said A. C., for such services as aforesaid heard and determined ; We, therefore, the said Justices, having examined into the cause and circumstances of the premises, upon oath, and all matters relating thereto, do hereby order and award, that he the said A. T., the said master [or owner, as the case may be,] shall, upon notice of this our order and award, pay unto him the said A. C. the sum of — for his services of every description, as aforesaid. Given under our hands and seals, at — in the said county of —, the day and year first above written.

A. M., J. P. [Seal.]

A. N., J. P. [Seal.]

A. R., J. P. [Seal.]



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The following Enactments relating to COMMON FIELDS, were omitted under that Title :—

By the 8 G. 4, c. 26. 4 V. 12, Every brand or mark adopted by the proprietors of any Common Field, in and by their regulations concerning such common field, or otherwise for the purpose of branding or marking the horses, or cattle, turned, or to be turned into such common field, before the same shall be used for that purpose, shall be entered by such proprietors in a book to be kept by the town clerk of the township or settlement wherein such field may be situate, who shall receive for so recording the said mark or brand, the sum of one shilling.

Sec. 2. Provided always, that such town clerk, after entry of any such brand or mark, shall not so enter any other brand or mark similar thereto, under penalty of ten pounds ; to be recovered by any person who will sue for the same by bill, plaint, or information in any Court of Record ; to be applied, one half to the use of the person who shall sue for the same, and the other half to the use of the poor of the township, parish, or settlement in which the office of such town clerk may be situate.

Sec. 3. If any proprietor or proprietors of any common field, or any person or persons by him or them, or any of them, duly authorised or appointed, shall brand or mark any horse, ox, or cow, or other cattle whatsoever, for the purpose of turning them or any of them into any common field, with any brand or mark not duly entered or recorded by the town clerk, in manner aforesaid ; or if any person or persons shall imitate, counterfeit, or use any such brand or mark, so entered and recorded as aforesaid, for the purpose of branding or marking a horse, ox, cow, or any other beast of the description aforesaid, except such person or persons as may be authorised and entitled so to do, under and by virtue of the regulations of the proprietors of the common field, so having adopted and entered such brand or mark with the town clerk as aforesaid, every person so offending, or being accessory thereto, on conviction thereof, before any two Justices of the Peace for the county or district wherein the offence was committed, shall at the option of such Justices, be adjudged, either to be committed to the common gaol of such county or district, for a term not exceeding three months, nor less than one month, and be accordingly committed, by warrant under the hands and seals of the said Justices ; or shall be adjudged to forfeit and pay a sum not exceeding five pounds, nor less than three pounds, with costs of suit ; to be levied by warrant of distress and sale of the offen-

der's goods and chattels, and to be paid, after deducting such costs, to the Overseers of the poor, for the use of the poor of the township, parish, or settlement, wherein such offence shall have been committed. *Perpetual.*

The proceedings before Justices, under this last clause, will be the same as in like cases, and, together with the requisite Forms, which may readily be filled up so as to serve ; are set forth respectively, under the Titles,—Information ; Warrant ; Conviction ; Commitment ; and Distress. It will be observed, that two modes of punishment are mentioned, either of which the Justices, in their discretion, may impose, but they cannot adjudge both. If they impose that of a fine, it would seem, that in default of distress, they cannot commit the party, as no such power is, in that event, given to them by the Statute.

Directions.

FIELDS,

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Allegi
Appea
Appre
Appre
Appre
Army,
ARRE

Arson,
ASSA

INDEX.

A.

- ABSENTEES**, liable to rates and labour on highways, 1.
Abuse, no assault, see Assault, &c. 21, Slander, 459, Affray 9.
Access, see Bastards, 40.
ACCESSARY, only in capital felonies, 2.
 before the fact, 3.
 after the fact, and receivers, 5.
 proceedings against, 8.
Accident, hurt by, see Assault, &c. 22, and Homicide, 241.
Accomplice, see Evidence, 167.
Account, false, see Cheat, 85.
Account Book, see Evidence, 162.
Accusation, false, see Conspiracy, 103.
Accused, not to be on oath, see Examination, 180.
Actions, against magistrates, see Justices of the Peace, 276.
Adultery, see Marriage, 318.
Affidavits, voluntary, see Oaths, 340.
Affirmation, of quakers, see Oaths, 341.
AFFRAY, what it is, 9.
 suppressing by a private person, 10.
 by a constable, 11.
 by a Justice, 11.
Allegiance, oath of, see Oaths, 341.
Appeals, see Poor, 355, 378, and Rates, 395.
Apprehending Offenders, see Arrest, 13.
Apprentices, see Servants, 442.
Apprenticeship, gaining settlement by, see Poor, 368.
Army, see Soldiers, 460.
ARREST. Who may or may not be arrested, 13.
 for what causes of suspicion an arrest may be, 14.
 by whom it shall be made, 15.
 the manner of an arrest, 16.
 what is to be done after it, 20.
Arson, see Burning, 80.
ASSAULT AND BATTERY. What is an assault, 21.
 what is a battery, 21.
 in what cases they may be justified, 22.
 how punished, 23.
 Forms, 24.

Assembly, unlawful, see Riot, 412.

Assessment, see Poor, 347, 352, and Rates, 388.

Assize of Bread, see Bread, 71.

B.

BAIL. Of bail in general, 27.

excessive bail, denying, improperly bailing, insufficiency, number of sureties and amount, &c., 28.

for what offences justices cannot bail, 29.

where two justices may bail, 32.

where one justice may, 34.

where a justice ought to bail, 35.

personating bail, by the 11 G. 3, c. 3. 1 V. 166, a felony, 36.

of the recognisance of bail, 36.

Forms, 38.

Bakers, see Bread, 72.

Ballast, see Ships, 458.

Bank Notes, forging, circulating counterfeit, and stealing of, see Bills and Notes, 70.

Banks of Rivers, breaking down, a felony, see Rivers, 416.

BASTARDS, who shall be deemed, 40.

evidence of parents as to illegitimacy, 40.

securing the maintenance of the child, 41.

securing the reputed father, 41.

bond of indemnity, 41.

directions, 42.

order of filiation and maintenance, 43.

Form of order, and directions, 47, 48.

appeal from such order, 49.

right of the father or mother to the custody of the child, 49.

making a false accusation of bastardy, 50.

murdering a bastard child, 50.

Forms, 51.

Battery, see Assault, &c., 21.

Beacons, see Ships, 457.

Beasts, trespassing, see Trespasses, 555.

BEEF and PORK, *Weighing of beef*, 65.

Inspection of beef and pork for exportation, 66.

Forms, 66.

Beggars, see Bridewell, &c. 75, and Vagrants, 567.

Behaviour, see Surety, 531.

Bigamy, see Marriage, 317.

Billeting, soldiers and militia, 68.

- BILLS** and **NOTES**, issue and circulation of, under 26.
 shillings, prohibited, except treasury notes, or notes
 between debtor and creditor, under penalty, 70.
 directions, 70.
 forging, altering, or stealing bank bills or notes, 70.
- Binding in Apprenticeship*, see *Servants*, 442.
- Binding to good behaviour*, see *Surety*, &c. 531.
- Births, Registry of*, see *Marriage*, 318.
- Biscuit*, see *Bread*, 71.
- BLASPHEMY** and **PROFANENESS**, punishment of, 71.
- Bond*, see *Bastards*, 54.
- BREAD**, to be sold by weight only, 71.
 assize of, 71.
 quality of, and punishment for adulterating, 72.
 deficiency in weight of, 72.
 marking of, 72.
 searching for defective bread, 73.
 hearing concerning offences and punishments, 73.
- Breaking into a Shop*, &c. see *Burglary*, 78.
- Breaking open doors*, see *Arrest*, 17, and *Warrant*, 576.
- BRICKS**, size and quality of, 74.
 seizure and forfeiture of, when not according to stand-
 ard, 74.
- BRIDEWELL**, &c., who may be committed to, 75.
 sessions, providing, &c. 75.
- BRIDGES**, sessions may raise money for building or repair-
 ing of, 76.
- BUGGERY**, punishment of, 76.
- Buoys*, see *Ships*, 457.
- BURGLARY**, what it is, 77.
 what shall be deemed a breaking, 77.
 entering, 77.
 mansion house, &c. 76.
 what shall be deemed night, 78.
 provincial statute concerning, 78.
 directions, 78.
 Forms, 78.
- BURNING**, houses, barns, buildings, corn, hay, wood, &c.
 felony without clergy, 80.
 directions, 80.
 threats of burning a house, 80.

C.

- CARRIAGES**, regulating rates of carriage, 80.
 rules as to driving carriages, 81.

- CARRIAGES**, (*continued.*)
 standing in streets, &c. 82.
 penalty for breach of rules, and application thereof, 82.
 locking wheels on driving down hills, 82
 directions, 83.
Carts, see Highways, 236.
- CATTLE**, regulations concerning infected cattle, 83.
 maliciously killing or maiming, 84.
 directions, 84.
 cruel treatment of, 84.
- Challenge*, to fight, see Affray, 9.
- CHEAT**, by the common law, 85.
 distinction between cheat which amounts to public offence, and what is only private injury, 86.
 by statute, 86.
 form of warrant, 87.
- Chimnies*, see Fires, 191.
- CLERK OF THE PEACE**, how appointed, 88.
 oath of office, 88.
 his fees in certain cases, 88.
 and annual allowance, 89.
 duty in certifying fines, 89.
 registering licences for sale of spirituous liquors, 89.
 registering marriages, 90.
 certifying attendance of justices in sessions, 90.
- COALS and Coal Mines**, measuring coals, 90.
 setting fire to coal mines, 91.
- COIN**, counterfeiting British, 91.
 Foreign, 92.
 buying clippings of, 92.
 importing or circulating base copper, 92.
 directions, 92.
- Collectors of Rates*, see Poor, 349, and Rates, 388, 392.
- Combinations among workmen*, see Conspiracy, 104.
- Commission of the Peace*, see Justices of the Peace, 260.
- COMMITMENT**, who may be committed, 93.
 to what place, 94.
 the Form of commitment, 94.
 charges of, 95.
 discharge of, 96.
 several Forms of, 96.
- COMMON**, sessions to make regulations concerning, 99.
- COMMON FIELDS**, lines and boundaries of, 100.
 boundary fences of adjoining lands, 101.
 regulations by proprietors of, 102.
 marking cattle turned thereon, 596.

Compounding a felony, see Larceny, 294.

Confession, see Evidence, 147, and Examination, 180.

CONSPIRACY, by the common law, 103.

among workmen, by statute of the Province, 104.

CONSTABLES, how to execute warrants, 106, and see titles, Arrest, 16, and Warrant, 576.

appointing deputies, 106.

actions against, 106.

fees of, see title, Fees, 185.

CONTAGIOUS DISEASES, quarantine concerning such diseases, 107.

health wardens, 109.

regulations, &c. by sessions, where no board of health, or health wardens, 109.

recovery of penalties in statutes concerning such diseases, 111.

directions, 112.

CONVICTION, general rules and directions concerning it, 112.

provincial statute relating to, and containing a form, 113.

stating the day of information, 115.

naming the informer, 115.

convicting a married woman, 115.

day of the offence, 116.

describing the offence, 116.

summoning party, 117.

appearance and pleading, 117.

default of appearance, 117.

naming witnesses, 118.

setting out the evidence, 118.

how to be given, 118.

defence, 118.

confession, 119.

adjudication, 119.

punishment, 119.

costs, 119.

must be under hand and seal of justice, 120.

directions, 120.

Form of bond on appeal, 121.

Coppers, see Coin, 92.

Copy, how far evidence, see Evidence, 156, 159.

Corn, see Grain, 224.

CORONER, his duty and proceedings in taking inquisitions, 121.

statute concerning his duty and fees, 122.

Forms, 124.

Correction, house of, see Bridewell, &c. 75.
Costs, see Fees, 184.
County Rates, see Rates, 386.
County Treasurer, see Treasurers, 554.
Criminal Offenders, see Commitment, 93.
Cruelty to Animals, see Cattle, 84.
Cursing, see Swearing, 541.
Cutting or Maiming a person, see Homicide, 243.

D.

DEBTORS, absconding, &c. statute concerning, 127.
Defamation, see Slander, 459.
DESERTERS, *from navy,* 128.
 from army, 128.
 expences of apprehending, maintaining, and conveying them, 130.
 Forms, 131.
DISTRESS, for levying fines and penalties, 132.
 making at several times, 132.
 what goods may be distrained, 133.
 breaking open doors to make it, 133.
 selling, and charges, 133.
 Forms and directions, 133—5.
DOGS, &c. killing or worrying sheep, 136.
 mad, going at large, 136.
 directions, 137.
Doors, breaking open in criminal cases, see Arrest, 17, and Warrant, 576.
DOWER, statute concerning, 138.
Driving Carriages, see Carriages, 81.
DRUNKENNESS, penalty for by statute, 138.
 Forms, 139.
Duties, see Revenue, 407.
DYKES, maliciously breaking down, punishable with death, 143.
 directions, 144.

E.

EELS, *see Fish,* 196.
Embezzlement, see Larceny, 284, 291.
ESCAPE, what it is, 144.
 retaking, 145.
 breaking open doors to retake, 145.
 warrant for retaking, 145.

EVIDENCE. Of evidence in general, 146.

the best evidence required, 146.
 number of witnesses, 147.
 of proving time and place, 147.
 admissions in criminal cases, 147.
 admissions in civil cases, 149.
 presumptions, 152.

Of written Evidence, 153.

acts of parliament, 153.
 records, 153.
 verdict, 154.
 judgment, 154.
 affidavits, 155.
 depositions of witnesses, 155.
 convictions, 156.
 probate of a will, 156.
 copies of records, 156.
 warrant, 156.
 church book, 157.
 gazette, 157.
 rule as to depositions of deceased witnesses, 158.

Deeds, 158.

in possession of the adverse party, 158.
 destroyed, 159.
 sealing, essential to a deed, 159.
 proof and admission of, 159.
 proving hand writing of witness to a deed, 160.
 proving hand writing of a party to a deed, 160.
 evidence relating to the contents of a deed, 161.
 fraud in deeds, 161.

Entries, 162.

tradesman's book of accounts, 162.
 entries in books, 162.

Handwriting, 163.

similitude of, 164.

Of the Evidence of Witnesses, 164.

incompetency, 164.
 husband and wife, 165.
 want of discretion, 165.
 lunatics, 166.
 infidels, 166.
 quakers, 166.
 judge or juror, 166.
 accomplice, 167.
 conviction of felony, &c., 167.
 incompetency from interest, 168.

EVIDENCE, (*Continued.*)

plaintiff a witness, 169.
 trustee, 169.
 heir at law, 169.
 prosecutor, 169.
 expectation of benefit, 170.
 agent, 170.
 evidence contrary to interest, 170.
 attorney, 170.

Of examining Witnesses, 171.

questions as to character, 171.
 to try credibility, 172.
 leading questions, 172.
 character of witnesses, 173.
 evidence on a former trial, 173.
 contradictory testimony on the same side, 174.
 hearsay and reputation, 174.
 parties in a suit being witnesses, 176.

Of the manner of giving evidence, 176.

examining witnesses apart, 176.
 affirmative to be proved, 176.

Of Process for appearance of witnesses, 177.

forms of Subpcena and Ticket, 177.
 statute concerning a justice summoning a witness, 178.
 see further under title, Witnesses, 587.

EXAMINATION, suspicion of felony, 179.

statute directing examinations, 179.
 how to be taken, 179.
 manner of examining, 180.
 subscribing them, 180.
 certifying, 181.
 binding by recognizance to give evidence, 181.
 married women and infants, 181.
 forms 182.

EXECUTION, see titles, Summary Trials, 528, and Trespases, 562.**EXTORTION. What it is, 183.**

by officers of justice, 183.

F.

False Money, uttering, see Coin, 92.

False Pretences, see Cheat, 85.

False Tokens, see Cheat, 86.

FEES, of justices, constables, and witnesses, 185.

Felony, see Burglary, 77 ; Coin, 92 ; Homicide, 242 ; Larceny, 280 ; Rape, 385 ; Robbery, &c., 416.

Feme Covert, see Wife, 586.

Fences, see Trespasses, 555.

FERRIES, regulations concerning them to be made in sessions, 186.

Filiation, see Bastards, 47.

Fines, see Clerk of the Peace, 89, and Trespasses, 565.

FIRES. Firewards for Halifax, 189.

regulations concerning fires, 189.

stealing at, 190.

sweeping chimnies, 191.

removing or altering chimnies, 191.

acts extended to Shelburne, 192.

to Windsor, Annapolis, Lunenburg, 192.

to Liverpool, 192.

engine men exempted from working on the highways, 192.

providing implements for firemen in Halifax, 192.

constables attending at fires, 193.

fire bells, 193.

chimney sweepers, 193.

pulling down houses, &c. at fires, 193.

several acts and regulations concerning fires, extended to certain towns, 194.

Firewards, see Fires, 189.

Fireworks, making, selling, or firing off, prohibited, 195.

FISH, *Pickled*, acts for inspection of, under penalties and forfeitures for selling or removing without inspection, 196.

act for inspection of smoked herrings, 200.

Forms, 202.

FISHERIES, act prohibiting the throwing of fish offal into the sea, 206.

act for regulation of river fishery, 207.

stopping the passage of eels, prohibited, 207.

act to prevent coasting vessels running foul of nets, 208.

FLOUR. Flour, biscuit, and ship bread, to be sold by weight only, 209.

flour and meal of every kind to be sold or bartered by weight only, 209.

inspection and branding of flour and meal, 210.

quantity to be contained in a barrel of flour, 210.

price of inspection, 210.

quantity to be contained in a barrel of meal, 211.

reshipment of flour or meal, 212.

FLOUR, (Continued.)

erasing brands before repacking, 212.
directions, 212.

Forcible Entry and Detainer, statute concerning, 213.

what is a forcible entry and detainer, 213.

Forms, 215.

directions, 216.

Foreigners, settlement and relief of, see title Poor, 361.

FORGERY, what it is, 217.

forging memorials of deeds, &c. 217.

deeds and wills, 217.

treasury notes, 218.

bank bills and notes, 218.

directions, 219.

forging certificates of quarantine, 220.

directions, 220.

Fortune tellers, see Bridewell, &c. 75, and Vagrants, 567.

Fraud, see Cheat, 85.

FREESTONE, inspection of, 220.

G.

GAMING. Gaming tables to be removed or broken down, and persons keeping them to give security for good behaviour, 221.

GAOLS AND GAOLERS. The sheriff to have the custody and keeping of gaols, 221.

who are to be confined therein and in what manner, 221.

appropriating part of a gaol as a work house, 222.

who may be committed to such work house, 222.

building and repairing gaols, 222.

selling or using spirituous liquors in gaols, 222.

directions, 223.

Gates on private ways, see Highways, 235.

Good Behaviour, see Surety, &c. 531.

GRAIN, measurers of, to be appointed, and standard weight thereof established, 224.

inspection and measurement of grain, 224.

not to be delivered from any vessel without admeasurement, 225.

measurers to attend only one vessel at a time, 225.

fees of measurers, 225.

directions, 225.

tolls at grist mills established, and regulations concerning grinding of grain, 226.

directions, 228.

Gran
Grist
GUA

Guide
GUNS

Hawke
Health
Hearse
Herrin
HIDE

High
Highw
HIGH

HO
F
HOMIC
by

Grand Larceny, see Larceny, 280.

Grist Mills, see Grain, 226.

GUAGERS, how to be appointed, their duty and fees, 228.
directions, 229.

Guide Posts, see Mile Posts, 319.

GUNS, firing of, in any towns, or suburbs thereof, prohibited, 230.

H.

Hawkers, see Pedlars, 343.

Health Wardens, see Contagious Diseases, 109.

Hearsay, see Evidence, 174.

Herrings Smoked, see Fish, &c. 200.

HIDES, cutting or injuring of, by butchers, 231.
inspection and marking of hides, 231.

High Treason, see Treason, 553.

Highwayman, see Robbery, 416.

HIGHWAYS, *Injuring or Obstructing of*, 232.

altering illegally, or encroaching on, 233.

side paths, 233.

trailing lumber on highways, 233.

cutting down trees on the sides of highways, near to
any river, lake, &c. prohibited, 234.

regulations concerning injuring or encroaching on streets
&c. in Halifax and certain other towns, 234.

gates and bars on private ways, 235.

directions, 236.

Labour on Highways, 236.

who are liable to labour and furnish carts, &c. 236.

summoning persons to work, &c., 237.

reducing labour, 237.

persons above sixty years to furnish carts, &c. 237.

surveyors not to alter roads without consent of two

Justices, 237.

clearing snow from roads, 237.

labour on roads on islands, 238.

recovery of fines, 238.

Sessions may grant permission to individuals to work
on certain roads, 238.

note, and directions, 238.

*Expenditure of Public Money for repair of Roads and
Bridges*, 239.

Forms, 240.

HOMICIDE, justifiable, 241.

by misadventure, 241.

HOMICIDE, (*Continued.*)

self defence, 242.

manslaughter, 242.

murder, 242.

provincial statute concerning killing, maiming, and stabbing, 243.

Horses, see Cattle, 83.*House Breaking*, see Burglary, 77.*House Burning*, see Burning, 80.*House of Correction*, see Bridewell, &c. 75, and Vagrants, 567.**HUE AND CRY**, what it is, and how to be made after felons, 244.**HUSBAND AND WIFE**, how far they may give evidence for or against each other, see Evidence, 165, Surety, &c., and Wife, 586.*Hydrophobia*, see Dogs, &c. 136.

I.

Idle and Disorderly Persons, see Vagrants, &c. 567.*Imprisonment*, see Arrest, 13, Commitment, 93.**INCEST**, statute for punishment of it, 245.**INDIANS**, statute prohibiting sale of spirituous liquors to Indians, 246.

two justices may order their instruction at schools receiving allowance from the Province, 246.

INDICTMENT, what offences are, and what are not indictable, 247.*Indorsing a Warrant* in another county, see Warrant, 581.**INFANTS**, how far answerable for crimes, 249.

their civil incapacities, 249.

their civil capacities, 250.

Infidels, oaths of, see Evidence, 166, and Oaths, 341.**INFORMATION**. Directions as to the course of proceedings in prosecutions by information before justices, 251.

Forms of Information in various cases, 253 to 256.

Inns and Innkeepers, see Taverns, 547.*Insane Persons*, see Lunatics, 312.**INSOLVENT DEBTORS**. Discharging them from imprisonment on executions, upon judgments by justices, 256.

note referring to statutes, 256.

statute for their discharge from arrest on mesne process, 257.

notice to creditors, 257.

examination of the debtor, and form of his oath, 257.

remanding to prison upon cause shewn, 259.

INSOLVENT DEBTORS, (*Continued.*)

assigning property, 259.
refusing discharge, 259.

J.

Journeyman, combinations among them to raise wages, &c.,
see Conspiracy, 104.

labouring on highways, see Highways, 236.

Jury, see Summary Trials, 491.

JUSTICES OF THE PEACE, Their authority in making and certifying records of acts done by or before them, 259.

cannot appoint a deputy, 260.

Form of their commission, 260.

qualification, 263.

where one justice may act, two may, 263.

of the King's demise, 263.

how far a justice is limited to his own county, 264.

indorsing a warrant issued in another county, 264.

powers as to keeping the peace, &c., 265.

to compel the giving of sureties, in cases of threats, 266.

time for which justice may bind to keep the peace, 266.

to what places he may commit offenders, 266.

has authority in cases of libel, 266.

Powers assigned to Justices in Sessions, 266.

in felonies, 266.

trespasses, 267.

forestallings, regratings, &c., 267.

extortions, 267.

other crimes and offences, by statutes, 268.

riots, routs, and unlawful assemblies, 268.

weights and measures, 268.

misbehaviour of officers of the court, 268.

inspecting and proceeding upon indictments, 268.

making and continuing process, 269.

hearing and determining on offences, 269.

awarding punishments, 269.

II. *Oaths of Office to be taken by Justices*, 270.

III. *Some general directions relating to Justices*,

justice not to act in his own cause, 271.

assaulting or abusing a justice, 271.

where justices should be together, when acting jointly, 271.

justice refusing to act, 272.

making records of acts done, 272.

JUSTICES OF THE PEACE, (Continued.)

in what cases a justice shall issue a warrant, and where a summons, 272.

justices failing to attend the sessions, without sufficient excuse, shall be reported, and removed from office, 273.

shall attend the terms of the supreme court in the county, 273.

cannot hold a tavern license, 273.

IV. *Their indemnity and Protection in the right execution of their Office, and their Punishment for the omission of it.*

when justice may commit for abuse, 273.

Forms of such commitment, 274.

where a justice is, and where he is not punishable for official acts, 275.

action against him, must be in the county where the act complained of was committed, 276.

no such action to be brought against him, until a month's previous notice has been given, 276.

may tender amends in such action, or pay money into court, 276.

action must be commenced within six months after the act complained of was done, 277.

in actions against them, for any of their proceedings under British or provincial statutes, may give such proceedings in evidence, under any brief plea, 277.

action against a justice for a malicious conviction, 277.

their punishment for misbehaviour, 277.

justice committing the first assault, 278.

acts of a justice who has not duly qualified, are not absolutely void, 278.

L.

Labourers, see Highways, 236, and Servants, 447.

LANDLORD AND TENANT. Tenants overholding, may be arrested by warrant from a justice, and bound to appear and answer at the supreme court, 278.

warning to quit to be given to tenants, 279.

the same warning for houses and lands, 279.

Forms in the case of overholding, 279.

directions, 280.

LARCENY.

I. *Of Grand Larceny.*

LA

Leath
Letter
LET

LIBE

LARCENY, (Continued.)

- what constitutes a felonious and fraudulent taking of goods, 280.
- taking on a claim of right, no felony, 281.
- where a taking of goods, only amounts to a trespass, 281.
- finding goods, 282.
- actual taking, requisite, 283.
- possession of the owner, 283.
- where goods are only in charge of another, 283.
- taking by a carrier, 284.
- embezzlement by servants, 284.
- where goods have been delivered to the prisoner, 285.
- goods pledged, 286.
- where goods have been obtained by fraud, 286.
- where they have been lawfully delivered, 287.
- felonious carrying away of goods, 287.
- by whose taking larceny may, and by whose it cannot be committed, 287.
- taking by a wife, 288.
- of what property larceny may be committed, 288.
- stealing goods of a person unknown, 289.
- provincial act concerning larceny, 289.
- II. *Of Petit Larceny.*
 - stealing under the value of 20 shillings, 289.
 - when bailable, 289.
- III. *Larceny from the Person*, 290.
- IV. *Larceny from the House*, 290.
- V. *Larceny and Embezzlement from Lodgings*, 291.
- VI. *Larceny of Bills, Notes, and other Writings for payment of Money*, 291.
- VII. *Punishments of Grand and Petit Larceny*, 292.
- VIII. *Receiving Stolen Goods*, 293.
- IX. *Taking a Reward to help to Stolen Goods*, 293.
- compounding a Larceny, 294.
- Forms of Information and Warrant for Larceny, 294.

Leather, see Hides, 231.

Letters Counterfeit, &c. see Cheat, 86.

LETTERS THREATENING, sending threatening letter, demanding money, &c., made felony by provincial statute, 295.

LIBEL, what it is, 296.

how punished, 296.

power and duty of justices, in cases of libel, 296.

Licensed Houses, see Spirituous Liquors, 461, and Taverns, &c. 545.

LIGHT HOUSES. Collectors of light duties, may call to their aid, magistrates, constables, and other peace officers, for carrying into effect the laws relating to light houses, 297.

LIME, exposed to sale, shall be measured and inspected by the proper officer, 297.

penalties and forfeitures for lime not of sufficient quality, or for deficiency in casks thereof, 297.

allowance for inspection, 297.

Lines of Townships, see Township Lines, 552.

LORD'S DAY. Goods, &c. not to be sold or offered for sale on the Lord's day, (except milk and fresh fish, within certain hours,) 298.

working, or practising sports or games, &c. thereon, 299.

resorting to taverns, &c. 299.

church wardens and constables preventing or suppressing disorders in time of divine service, 299.

attending public worship, 300.

conviction and punishment for offences, 300.

reading the statute publicly, 300.

opening shops or selling goods, &c. 300.

resorting to taverns, &c., and idling, and drinking spirituous liquors, not to be permitted by retailers, 301.

serving process on the Lord's day, 301.

bail cannot take their principal on that day, 301.

forms and directions, 301.

LUMBER.

I. Survey of Lumber.

dimensions and qualities of different kinds of timber and lumber, prescribed, and regulations concerning the survey thereof, 307.

II. Bringing Lumber, &c. down Rivers.

regulations concerning the same, may be made in the sessions, 311.

LUNATICS, may be taken by a warrant from justices, and confined, or sent to the last place of settlement, and be there secured, 312.

Form of Warrant and of Order for obtaining payment of expenses concerning Lunatics, 313.

M.

Madness, see Dogs, 136, and Lunatics, 312.

MAI

MAL

Mam

Mans

Mans

MAR

Maste

Meas

MIL

MIL

Mills,

Miller

Mines,

Minor

MAIM, what it is at common law, 314.
 provincial statute concerning it, 314.
 malicious intention, and lying in wait, requisite to be
 shewn in cases upon the statute, 315.
 justification of, 315.
 directions, 315.

MALICIOUS INJURIES,

- I. *To Cattle*, 315.
 - II. *To Real or Personal Property*, 316.
- directions, 317.

Manner. Being taken with the *manner*, what, see *Bail*, 30.

Mansion House, what, see *Burglary*, 78.

Manslaughter, see *Homicide*, 242.

MARRIAGE, provincial act concerning polygamy, incest,
 and adultery, 317.

registry of marriages, 318.

Master, see *Servants*, 441.

Measures, see *Weights and Measures*, 583.

MILE POSTS, statute prescribing punishment, for defacing
 or destroying them, 319.

MILITIA.

1. *Enrolment of*, 320.
2. *Arms*, 320.
3. *Training*, 322.
4. *Watching and Warding*, 323.
5. *Refusing Appointments*, 323.
6. *Clerks of Companies and Battalions*, 324.
7. *Commitment for improper behaviour*, 324.
8. *Certificates of Surgeons, &c.* 324.
9. *Reports of Officers*, 325.
10. *Boards of Officers*, 325.
11. *Actual Service*, 325.
12. *Recovery of Fines*, 326.

Note, concerning several expired enactments, relating
 to the militia, 326.

musters for drill, &c. dispensed with, 327.

returns respecting companies and battalions, 327.

in case of war or other emergencies, certain expired
 enactments may be brought into operation, 327.

how fines concerning the militia shall be recovered and
 applied, 328.

directions, 328.

Mills, see *Grain*, 226.

Millers, see *Grain*, 226.

Mines, see *Coals and Coal Mines*, 91.

Minors, see *Infants*, 249.

Misadventure, see Homicide, 241.

MISDEMEANOR, what, 328.

Mittimus, see Commitment, 96.

Murder, see Homicide, 242, Bastards, 50.

N.

Navigation, see Ships, 457, and Wreck, 589.

NAVY.

1. *Deserters from*, 329.

2. *Selling or Receiving Slop Clothes*, 330.

Nets, see Fisheries, 207—8.

Night, when it commences, see Burglary, 78.

arresting in the night, see Arrest, 16.

NUISANCE.

I. *At Common Law.*

what acts or things amount to a nuisance, 331.

how punished, 331.

how it may be removed, 331.

II. *By Statutes.*

1. *Nuisances in Rivers*, 331.

2. *Nuisances concerning Health*, 332.

sessions to make regulations, 332.

removal of nuisances, 333.

inspecting and examining as to nuisances, 333.

prosecutions for penalties on the 3 W. 4, c. 40, 333.

charges of removing nuisances, 334.

sessions to appoint health inspectors, 334.

special court formed, to have power concerning nuisances, 334.

powers and duties of health inspectors, 334.

examining drains, docks, and other places, 334.

constructing drains, privies, &c. 335.

cleansing and repairing privies, 335.

regulations concerning opening privies, 336.

foul or infectious substances, not to be placed in streets and certain other places, 336.

removal of nuisances from streets, &c., 336.

removing nuisances from houses, &c. 336.

selling, or having unwholesome provisions, 337.

regulations as to the removal of nuisances, 337.

entering houses and other places, to examine as to nuisances, 337.

punishment for violation of enactments concerning nuisances, 338.

limitation of penalties, and prosecutions for the same, 338.

NUISANCE, (continued.)

- who shall prosecute for penalties, &c. 338.
- application of penalties, 339.
- appeals from decisions concerning nuisances, 339.
- mode of stating offence, in indictments for nuisances, 339.
- Directions, 339.

O.

- OATHS.** Power of justices to administer them, 340.
- affirmation of quakers, allowed, instead of their oath, except in criminal cases, 341.
- oath to be administered according to the ceremonies of the party's religion, 341.
- Form of the Oath of Allegiance, 341.
- Offset*, see Summary Trials, 525.
- ORPHANS**, poor, may be bound out as apprentices, by overseers of poor, with consent of two justices, 341.

P.

- Parents and Children*, to maintain each other, see Poor, 358.
- PARTITION.** How expences of executing writs of partition of lands, shall be assessed and recovered, 342.
- Note on the subject, 343.
- Paupers*, see Poor, 346.
- Peace*, see Surety of Peace, 531.
- PEDLARS**, must give bond, take out license, and pay certain duties, 343.
- penalty and forfeiture of goods, for selling without license, 344.
- justices, sheriffs, and constables, enjoined to put in execution the law concerning pedlars, 344.
- exceptions as to certain persons and articles, 344.
- money arising under the act relating to pedlars, to be applied in the same manner as money from licences for sale of spirituous liquors, 344.
- PERJURY**, by the common law, 344.
- by the provincial statute, 32 G. 2, c. 20, sec. 9. 1 V. 30, 344.
- subornation of, by the same statute, 345.
- punishment of perjury, and subornation of, 345.
- party charged may be bound over to the sessions, by one justice, 345.
- Petit Larceny*, see Larceny, 289.

Pickpocket, see Larceny from the Person, 290.

Pillory, see Incest, 245, and Perjury, 345.

Plague, see Contagious Diseases, 107.

Pleadings, see Justices of the Peace, 277.

Polygamy, see Marriage, 317.

POOR.

I. *Support of the Poor.*

general statute of the 4 G. 4, c. 6. 3 V. 149,
respecting the support of the poor, 346.

voting money at public meetings, 346.

assessment and collection of rates, 347.

appeals against rates, 347.

appointment and duty of overseers, 347.

examination of overseers' accounts, 348.

finer on overseers for neglect of duty, 348.

amercements by the sessions, 348.

proceedings, on assessors refusing to serve, 349.

collectors refusing to serve, 349.

finer on collectors for neglect of duty, 349.

recovering from a pauper's estate, expences of his
relief, 350.

levying for rates, pending an appeal, 350.

reimbursement on appeal, 350.

what number of assessors may be appointed, 350.

assessors shall assess themselves, 351.

I. *Of Overseers.*

their appointment in the sessions, 351.

may be indicted and punished for neglect of pro-
viding for the poor, and other neglects of duty,
351.

no expences to be allowed them beyond what are
barely necessary, 351.

salary not allowable, 352.

how to be reimbursed money advanced by them,
352.

II. *Of the Poor Rate.*

1. *Upon whom the rate may be made.*

Occupiers only, are in general to be charged, 352.

Inhabitants only are to be rated, and only for
visible property in the place where they dwell,
352.

corporate bodies to be rated, 352.

schoolmaster to be rated for premises occupied by
him, belonging to the school, 353.

person residing as servant of the crown, in build-
ings used for public purposes only, not to be rated
for them, 353.

POOR, (support of, continued.)

2. What property is rateable.

stock in trade is rateable, 353.

money at interest or in the public funds,—salaries,
—the profits of an attorney, and rent, are not
rateable to the poor, 353.

lime works and slate works are rateable, 354.

farmer may be rated for his dairy of cows, let to
a dairyman, or the dairyman may be rated for
the same, 354.

the profits of mineral or other springs of water are
rateable, 354.

docks are rateable, 354.

3. Where property is rateable.

real property must be assessed where it is situa-
ted, 354.

the person in possession of personal property must
be rated for it, in the place of which he is an
inhabitant, 354.

vessels must be rated in the place where they are
locally and visibly domiciled, although out of it
at the time of making the rate, 354.

4. Of the proportion in which the Rate shall be made.

lands and houses may be rated differently, 354.

property must be rated according to its present
value, 354.

a person may be rated for money, proved to be in
his possession, 354.

rate must be equally made on all classes of persons,
355.

rent not a certain criterion of value by which to ap-
portion a rate.

5. Appeal ; and the power of the Sessions thereupon.

appeal to be to the next practicable sessions after
being aggrieved, 355.

Qu. Whether notice of appeal is requisite ? 355.
which party shall begin, on the hearing of an ap-
peal, 355.

remarks as to amending, or setting aside a rate, 355.

6. Of distraining for the Poor Rate.

party to be summoned in order to his being heard,
before issuing warrant of distress, 357.

action of debt will not lie for a poor rate, 358.

no remedy against defaulter but by distraining his
goods, 358.

III. Of Relief.

POOR, (*support of, continued.*)1. *Of the liability of parents and children to maintain each other.*

provincial statute on the subject, 10 G. 3, c. 1, § 5. 1 V. 158, 358.

extends to natural relations only, 358.

what persons are not bound to maintain certain others, 358.

reputed grandfather, or grandmother not bound to maintain a bastard, 359.

2. *Of the Order of Maintenance of Parents and Children.*

what particulars must be set forth in the order, 359.

order can only be made in the sessions, and in the county where the person on whom it is made dwells, 359.

3. *Of persons deserting their families.*

section on the subject, in the statute, 10 G. 3, c. 1, 359.

certain particulars which must be stated in the order of the justices, 360.

[For punishment of those who desert their wives and children, see title,—Vagrants.]

4. *Of relief in general, and of the ordering of the Poor.*

section of the statute 10 G. 3, c. 1. 1 V. 157, declaring what persons shall be entitled to relief and where, 360.

remarks as to who shall be relieved, and who have the right of judging and ordering as to the relief and management of the poor, 360.

overseer indictable if he do not provide for the poor, 361.

sessions cannot order overseers to pay bills of a surgeon or nurse, 361.

foreigners to be relieved where found, 361.

Forms of Summons, Warrant, and Order, 362.

II. *Settlement of the Poor.*

what persons cannot gain a settlement, 364.

statute 10 G. 3, c. 1, 1 V. 157, declaring who shall have a settlement in a township, and be entitled to relief, 364.

examination as to settlement of a pauper, and of removals, 365.

justices may bind out beggars or strollers, 365.

children shall be supported where their deceased parents gained a settlement, 365.

POOR, (*settlement of, continued.*)

parties grieved may appeal to next sessions, 366.

I. *Settlement by Birth.*

how birth may be proved, 366.

1. *Bastards.*

settlement of bastards, where born, as a general rule, 366. Exceptions—mother coming into a place by collision—birth after order, but before actual removal,—the same pending appeal, on which order of removal is reversed,—bastard born in the house of correction or jail,—born while the mother is removing under an order, 367.

bastard not to be removed whilst a nurse child, except when deserted by the mother—how to be maintained whilst a nurse child, 367.

parents may prove they never were married, 367.

2. *Of Legitimate Children.*

father's settlement is that of legitimate children, when it can be found out ; otherwise, *prima facie*, the place of their birth, 367.

settlement by birth of legitimate children, 367.

child born in one parish, whose mother dies in another, while passing to a third, shall be settled where born, 367.

proof as to legitimacy of children, 367.

parents may be examined on this point and their declarations concerning it will be evidence after their death, 367.

II. *Settlement by Apprenticeship.*

remarks as to this kind of settlement being gained by a service not under indentures, 368.

service in the case of infant masters and apprentices, 368.

condition of the master immaterial, 368.

remarks as to the time and place of service, 368.

where the *residence* shall be held to be, 368.

cases where settlement shall be in the place of service, 368.

service with a second or third master, 368.

cancelling indentures, 369.

evidence may be given of contents of indentures proved to be lost, 369.

III. *Settlement by Hiring and Service.*

enactment as to this kind of settlement, 369.

remarks thereon, 370.

POOR, (*settlement of, continued.*)

points determined as to parties—hiring,—and service, 370.

concerning the contract of hiring, 370.

service without hiring, does not gain a settlement, 371.

service by hiring, with stipulations as to work, 371.

hiring for eleven months gains no settlement, 371.

hiring with leave of absence, does not gain a settlement, 371.

hiring, with stipulations as to working hours, wages, &c. 371.

retrospective hiring, 372.

service under several hirings, 372.

absence or illness of servant, 372.

dissolution of contract, 372.

distinction between a dispensation with the service and a dissolution of the contract, 373.

residence of the servant, 373.

note, as to the time of the expiration of the service, preceding the application for relief, 373.

IV. *Settlement by Serving an Office.*

need not be a township office, but must be a public annual office in a township, 373.

a situation by contract with parish officers, not a public office, 373.

office must be executed for one whole year, at one time, 373.

V. *Settlement by paying Taxes.*

party rated to illegal rate. and paying, gains a settlement, 373.

where the name is added to a rate after payment, no settlement is gained, 373.

person *paying* must be the one *rated*, 374.

rate must be produced as evidence of being charged, 374.

rate paid by tenant, though refunded by landlord, gains a settlement, 374.

church rate a public tax, 374.

rate too narrowly made, sufficient to gain a settlement, 374.

VI. *Settlement by Parentage, and herein of Emancipation.*

enactment for support of children in their deceased parent's place of settlement, 374.

POOR, (*settlement of, continued.*)

father's last settlement is that of the children, until they acquire one of their own, 374.
 children of vagrants, 374.
 child may gain a settlement of its own after seven years of age, 374.
 proof as to child's settlement, 374.
 posthumous children, 374.
 father's derivative settlement. 374.
 father running away, 375.
 father a foreigner, 375.
 where children shall have the mother's settlement, 375.
 emancipation of children, 375.

VII. *Settlement by Marriage.*

a wife follows her husband's settlement, 375.
 wife can gain no settlement distinct from her husband, 375.
 settlement of a woman where her husband dies, runs away, or is absent from the country, 375.
 woman does not lose her maiden settlement, by marrying a man who has none, 375.
 a settlement lasts during life, or until a new one is gained, 375.
 proof of marriage as to settlement thereby, 376.
 mother may give evidence to bastardize her issue, 376.

VIII. *Of Removals.*

1. *Who may and who may not be removed.*

person not removeable before applying for relief and being actually chargeable, 376.
 no removal to a township not having overseers, 376.
 a wife cannot be removed from her husband, but if not residing with him, may be removed to his last settlement, 376.
 wife and children of a foreigner not to be removed from him to the wife's settlement, 376.
 wife may be removed from her husband who has no settlement, if they consent, 376.
 servant cannot be removed from his master, 377.

2. *Declaration and Examination as to place of Settlement.*

enactment on the subject, 377.
 manner of taking and certifying declaration of pauper, 377.
 inadmissible evidence as to settlement, 377.

POOR, (removal of, continued.)**3. Warrant for Removal.**

remarks on the enactment concerning removal, 378.
warrant to be executed by overseers of the removing township, 378.

justices to be together at time of hearing, 378.

what particulars must be stated in the warrant, 378.
examination must be by the same justices who removed, 378.

pauper must be heard before being removed, 378.

4. Appeal against the order of Removal.

pauper may appeal as well as the township, 379.

appeal must be to the *next* sessions after removal, 379.

note, as to notice of appeal being requisite, 379.

legal effects of an order of removal, 379.

sessions cannot make an original order, 379.

statute concerning expenses of relief, and costs of removal, 379.

Forms of Examinations and Warrant of Removal, 380.

Posse Comitatus, see Arrest, 17.

POUNDS, statute concerning the building and repairing of them, 362.

Prison, see Gaols, 221.

Process, see Summons, 529, and Warrant, 575.

Profaneness, see Blasphemy, 71.

Promissory Notes, see Bills and Notes, 70.

PUBLIC GROUNDS. Statute concerning encroachments on public roads, landings, and grounds, and for appointment of supervisors thereof, 333.

Pumps, see Wells and Pumps, 585.

Q.

Quakers, see Oaths, 341.

R.**RAPE**. What it is, 385.

may be committed on a strumpet, 385.

consent afterwards no excuse, 385.

party ravished may give evidence, 385.

all present and assisting, are principal offenders, 385.

provincial statute concerning the offence, 385.

directions, 386.

RATES, (County.)

- I. *Purposes for which rates may be made and levied.*
clause of the statute on the subject, 386.
- II. *Appointing Assessors and Collectors,* 388.
- III. *Making the Assessment, and herein of the persons and property liable to be rated.*
enactment on the subject, 388.
who are, and who are not to be considered inhabitants, for the purpose of being rated, 389.
of proportioning the rate, 389.
of the kinds of property liable to be rated, 390.
exceptions as to liability to the rate, 390.
occupation of real property, 390.
of the possession of property, real and personal, 391.
how party is to be rated, as to the locality of his property, 391.
concerning rents, and as to profits of personal property, 391.
of the rateability of stock in trade, 392.
- IV. *Collection of Rates and Prosecutions for the same.*
enactments concerning the same, 392.
remarks as to legal proceedings for recovery of rates, 393.
summoning for non-payment, 393.
directions concerning prosecutions for rates, and against collectors, 394.
- V. *Of Appeals.*
enactments on the subject, 395.
appeal must be to the next sessions at which it can be lodged, 396.
several parties may join in notice of appeal, 396.
nature and form of notice, 396.
proceedings on hearing appeals, 396.
calling of special sessions, discretionary in justices, 396.
- VI. *Expenditure of the Money raised.*
enactments on the subject, 397.
- VII. *Recovery of Penalties.*
enactment concerning the same, 398.
directions respecting prosecutions, 398.
- VIII. *Other Regulations concerning County Rates.*
compensation to collectors and others, 399.
witnesses, 399.
actions for proceedings concerning rates, 399.
removal of rates, &c. by certiorari, 399.
Forms of summons and warrant of distress, 400.

Receivers, see Larceny, 293.

RECOGNISANCE, what it is, 401.

power of justices to take recognisances, 401.

of the essential parts thereof, 402.

manner of taking the same, 402.

how to be certified, 402.

of estreating a recognisance, 402.

Forms of recognisances in several cases, 402.

Forms of minutes thereof, 405.

Record, see Justices of the Peace, 259.

REGISTRY OF DEEDS, statute on the subject, 405.

Registry of Marriages, Births, and Deaths, see Marriage, 318.

Replevin, see Trespasses, 559.

RESCUE, what it is, 406.

rescuer incurs the same offence as that of the party rescued, 406.

Restitution of Stolen Goods, see Larceny, 293.

REVENUE.

1. *Tide Waiters*.

their compensation in cases of delay of lading and unloading, on entries for exportation, and how to be recovered, 407.

2. *Smuggling*.

statute of 4 W. 4, c. 50, on the subject, 407.

goods, &c. liable to forfeiture may be seized by a justice, and certain other officers, 407.

entering houses, &c. to search for smuggled goods, 407.

assaulting or obstructing officers, 408.

prosecutions before justices, against smuggled goods, 408.

appeal from decision of justices, 409.

delivering up on security, property seized, 409.

statute of the 6 W. 4, c. 8—entering and examining vessels and boats, 410.

seizing goods, vessels, &c. by magistrates and other officers, 410.

penalty for obstructing officers, 410.

custody of goods and vessels seized, 411.

actions against officers for acts done under the statute, 411.

certificate of probable cause, 411.

RIDING DISORDERLY, statute 4 G. 4. prohibiting it, 411.

RIOT, rout, and unlawful assembly.

I. *Definition of them severally*, 412.

II. *How, and by whom the same may be restrained*.

RIOT, &c. (continued.)

- by a private person, 415.
- by a sheriff, constable, or other peace officer, 415.
- by a justice or justices, 415.
- justice may record a riot in his view, 416.

RIVERS, breaking the banks of rivers, felony without benefit of clergy, by the 6 & 7 G. 3, c. 1, 416.
directions, 416.

Roads, see *Highways*, 232.

ROBBERY, from the person, 416.
what particulars are essential to constitute the offence, 416 to 418.
provincial enactment concerning it, 418.
justices of the peace cannot bail for it, 418.
directions, 418.

Rockets, see *Fireworks*, 195.

Rogues, &c. see *Vagrants*, 567.

Rout, see *Riot*, 412.

Rum, see *Spirituous Liquors*, 461.

S.

Sabbath, see *Lord's Day*, 298.

SALT, statutes concerning the measurement of it, 419.
directions, 419.

SCHOOLS, statute authorising the assessment and levying of rates for the establishment and support of common schools, 419.
directions, 420.

Sea Banks, see *Dykes*, 143.

SEAMEN, (Merchant.)

1. *Agreement.*
nature and particulars of it, 420.
stipulation as to the sale of the vessel, 421.
reservation as to means for recovery of wages, 422.
Form of the agreement, 422.
clause as to seamen entering the navy, 424.
2. *Absence and Desertion.*
seaman refusing to join the ship, after signing agreement, 424.
forfeiture on absence from duty, 424.
forfeitures for desertion, 425.
3. *Wages.*
liability of sureties for seamen, 426.
actions against such sureties, 426.
assignment or sale of wages, 427.

SEAMEN, (continued.)

- statute of the 7 W. 4, c. 56, in amendment as to wages, 427.
- forfeitures by owner or master, on withholding wages, 427.
- recovering wages in actions before justices, 427.
- table of fees in such actions, 429.
- suits for the recovery of wages under £20, not to be brought in the courts of admiralty or common pleas, 429.
- proviso as to coasting vessels, 430.
- directions, 430.
- 4. *Secreting Seamen.*
 - enactment against secreting seamen, or detaining their clothes, &c., 430.
- 5. *Sickness of Seamen*, 431.
- 6. *Discharging and leaving Seamen abroad*, 431.
- 7. *Penalties and Forfeitures.*
 - enactment, prescribing certain penalties for certain specified offences, 432.
 - manner of ascertaining forfeitures by a seaman, 432.
 - penalty for refusing a certificate to a seaman, on his discharge, 433.
 - manner of recovering and applying penalties, &c., 433.
 - directions as to their recovery, 434.
 - Forms of Complaints, Warrants, Order, &c. 434.
 - directions, 438.

Search Warrant, see *Warrant*, 575.

Self Defence, see *Homicide*, 342.

Self Murder, see *Coroner*, 126.

SERVANTS.**I. Apprentices.**

- must be bound by deed, 441.
- apprentice, whether infant or adult, must be party to the deed, 441.
- master may be an infant, 441.
- where indenture is, or is not voidable by an infant, on his coming of age, 441.
- master may correct apprentice for misbehaviour, 441.
- statutes for setting to work, or binding out, children of poor persons, or poor orphans, 442.
- assignment of apprentices, 442.

II. Hired Servants.

- retainer and service, 442.

SERVANTS, (continued.)

- servant becoming sick or disabled, 443.
- chastising servant, 443.
- departing from service, 443.
- discharging servant, 443.
- leaving service without consent, a forfeiture of wages, 443.
- discharge of servant by a magistrate, 443.
- liabilities of master for acts of servant, 444.

III. Regulations concerning Apprentices and Hired Servants; by certain Statutes.

1. Contract of Hiring.

- agreement for more than a month must be in writing, and express the terms, 444.

how remaining time of service may be assigned, 444.

2. Desertion and Misbehaviour.

- what satisfaction servant shall make for desertion or absence, 444.

mode of obtaining it, 445.

proceedings in cases of misbehaviour, 445.

sessions to make regulations concerning refractory or runaway servants, 445.

3. Ill treatment of Servants.

enactment on the subject, 445.

4. Harboursing and detaining Servants.

penalty on masters of vessels for so doing, 446.

5. Incapacity of Servant in the Fishery.

such servant, on proof, shall forfeit all wages, 446.

6. Selling Spirituous Liquors to Servants.

forfeiture for so doing, and wages not to be stopped, 446.

all securities given by servant for spirituous liquors to be void, and party suing on account, &c. whereof part is for such liquors, shall be non-suit, 447.

punishment of retailers, for buying or receiving clothes &c. from servants or labourers, 447.

7. Certificate of Service and Discharge.

enactments on the subject, 447.

Forms of Complaints, Warrant, Order, Summons, Discharge, 448.

SESSIONS, (Special.) What is a special session, 452.

what number of Justices shall form the same, 452.

may be held to try for simple larcenies, &c. 453.

notice as to holding special sessions, 453.

Set Off, see Summary Trials, 525.

- SEWERS.** Commissioners of sewers to be appointed, 453.
 assessments to be made for repair of dykes, &c., 454.
 recovery of dyke rates, 454.
 letting lands for payment of rates, 454.
 selling lands for same purpose, 454.
 persons, whose cattle at pasture injure dyke, to repair the same, under certain penalty, 454.
 mode of recovering assessment above a certain sum per acre, 455.
 oath of commissioners and others shall be in writing, 455.
 clerks and collectors may be witnesses, 455.
 directions as to recovery of rates and penalties, 455.
- SHEEP.** Driving away sheep, clandestinely, 456.
 keeping dogs accustomed to kill or worry them, 456.
 directions, 456.
- SHERIFF.** How and when appointed, 456.
 shall execute the warrant of a justice if directed to him, 457.
 shall attend the sessions, 457.
 is punishable by the sessions for defaults in executing their precepts, 457.
 is a conservator of the peace and may award process and take surety thereof, 457.
- Shipmasters*, see *Seamen*, 420.
- SHIPS.** Punishments for destroying buoys, beacons, &c. or making fast to the same, 457-8.
 penalty for improperly unlading ballast, 458.
- Shipwreck*, see *Wreck*, 589.
- SHOOTING AT A PERSON**, (Maliciously.) Statute making the offence a capital felony, 459.
 justices cannot let to bail, on a charge of this offence, 459.
- Shop Book*, how far evidence, see *Evidence*, 162.
Shop Breaking, see *Burglary*, 78.
- SLANDER**, how far cognizable by justices of the peace, 459.
Smuggling, see *Revenue*, 407.
- SOLDIERS**, Statute prohibiting the buying or receiving from soldiers, clothing, or certain other articles; and imposing punishment for such offence, 460.
 directions as to prosecutions for the offence, 460.
- SPIRITUOUS LIQUORS.**
1. *Licenses for the sale thereof.*
 granting licenses in general sessions, 461.
 particulars to be contained in licenses, 462.
 granting licenses in special sessions, 462.

SPIRITUOUS LIQUORS (*continued.*)

no general license except in Halifax, 462.
 wine and beer license not to be granted, 462.
 licenses gratis, 462.
 justice of the peace not to hold a tavern license,
 463.

2. *Selling Spirituous Liquors without License, or after the expiration thereof.*

enactment against selling without license, 463.
 selling after the expiration thereof, 464.

3. *Hanging out Signs.*

enactments on the subject, 464.

4. *Selling in any other place than the one specified in the License.*

enactment prohibiting it, 465.

5. *Order in Licensed Houses, and when and to whom Spirituous Liquors shall not be sold or furnished.*

retailers liable to prosecution and prescribed punishment, for harbouring, &c. apprentices or bound servants, 465.

forfeitures of master, for selling spirits to servant, 466.

keeping order in licensed houses, 466.

opening shops, or selling goods, (except bread or milk) on the Lord's day, prohibited under a penalty, 466.

persons licensed, to be prosecuted and punished in the sessions, for certain specified offences, 467.

certain enactments to be posted up in licensed houses and shops, 468.

6. *Selling Goods in Taverns.*

enactment on the subject, 468.

7. *Regulations as to Quantities in which Spirituous Liquors may be sold.*

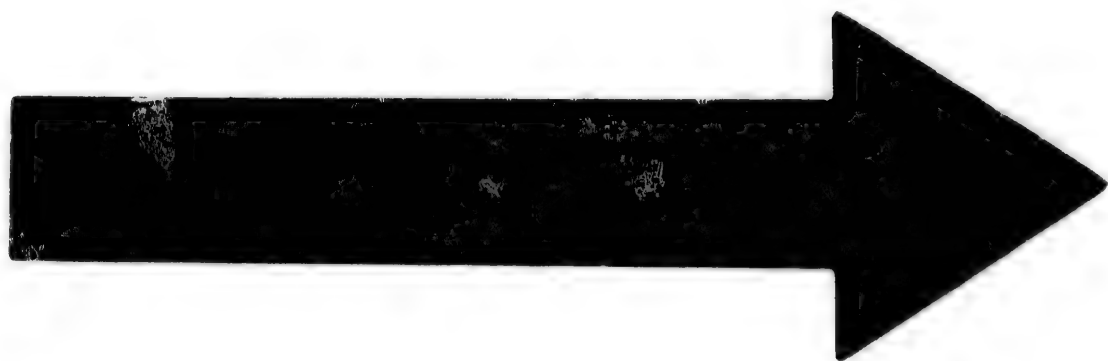
not less than a quart to be sold under a shop license, 468.

what quantities may be sold without a license, 469.
 any quantity, not exceeding a quart at one time, may be sold in a tavern, 469.

8. *Prosecutions for Offences.*

statute of the 7 W. 4, c. 48, prescribing and giving forms, to be used in prosecutions under the license acts, 469.

mode of proceeding on trial of offences, 470.



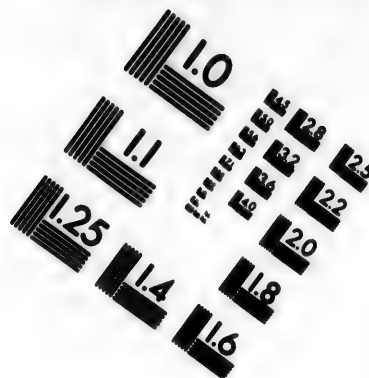
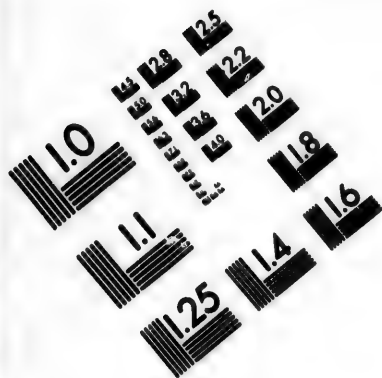
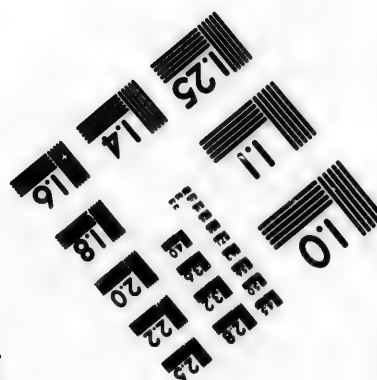
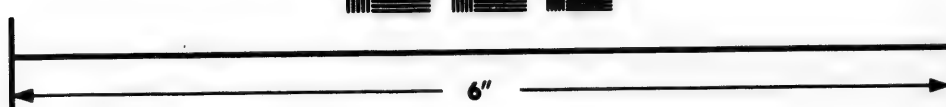
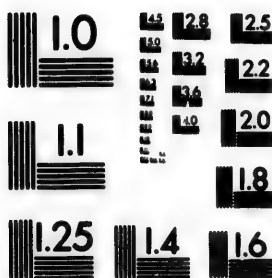


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SPIRITUOUS LIQUORS (*continued.*)

married women and servants, liable to penalties under the license acts, 470.

9. *Witnesses on Prosecutions.*

penalty on witnesses, and recovery thereof, for non-attendance agreeably to summons, 470. directions, 471.

10. *Application of Penalties.*

enactment on the subject, 471.

11. *Obstructing Clerks of Licenses.*

punishment for this offence, 471.

12. *Recovery of License Duties.*

how they shall be recovered, 472.

13. *Suspending Licenses for violation of enactments.*

may be done by two justices, on complaint, subject to appeal to the next general sessions, 472.

14. *Selling Spirituous Liquors on Credit, and Securities and Pledges for Payment of the same.*

retailers to have no remedy to recover above 5 shillings, for spirituous liquor sold on credit, 473.

person receiving pawn or pledge for payment of spirituous liquors above 5 shillings, shall be compelled, by warrant, to restore the same, and be fined, 473.

proviso as to travellers and boarders, 473.

securities and demands, by and against servants and labourers, for spirituous liquors, to be void; and party suing thereon, to be nonsuit, 474.

wearing apparel, tools, &c. not to be bought, or taken in pawn from servants or labourers, on pain of imprisonment, 474.

act to be posted up in houses of retailers, under a penalty, 474.

directions as to prosecutions and penalties, 474.

Forms of complaints, warrants, &c. with corresponding directions, 475 to 485.

Squibs, see *Fireworks*, 195.

Stabbing, see *Homicide*, 243.

Stealing, see *Larceny*, 280.

Stock in Trade, whether chargeable to the Poor, see *Poor*, 353, and *Rates*, 392.

Submission to Arbitration, see *Summary Trials*, 521.

Subpœna to give evidence, see *Witnesses*, 587.

Suicide, see *Coroner*, 126.

SUMMARY TRIALS, before Justices, Introductory remarks on the subject, 486.

I. *The Several Statutes relating to the recovery of Debts before Justices of the Peace.*

statute concerning the direction and service of writs of summons, 487.

in what cases justices shall not have jurisdiction, 487.

general statute for the recovery of debts not exceeding £5, 488.

summoning, hearing, and making up judgment, 488.

execution, 488.

proviso, as to arresting a party, 488.

summons or capias to be served at least 3 days before the return, 489.

clause prescribing forms of writs, 489.

table of fees, 489.

taking excessive fees, 489.

Forms of summons, capias, and execution, 489.

actions involving titles to land, not to be tried before justices, 490.

statute 7 W. 4, c. 60, authorising two justices to try cases of debts between £5 and £10, 491

summons or capias in such cases to be served six days before the return, 491.

jury may be ordered on request, 491.

juror not appearing, 491.

trial and verdict, 491.

challenging jurors, 492.

discharging jury, 492.

fees on trial by jury, 492.

set off, 492.

plaintiff to file statement of demand, or copy of instrument sued on, 493.

statute 7 W. 4, c. 59, for the recovery of debts not exceeding £5, before justices, in the Island of Cape Breton, 493.

regulations concerning recovery of such debts, 494.

1. Filing statement of demand.
2. Concerning forms of writs.
3. Who shall serve writ.
4. Service of the same.
5. Arresting defendant.
6. Certifying service of writ.

SUMMARY TRIALS, (*continued.*)

7. Before what justice, suit shall be.
8. Time of hearing cause.
9. How plaintiff's demand shall be proved.
10. What judgment when there is a set off.
11. Tender.
12. When, and how, appeal shall be granted.
13. Bond and proceedings on appeal.
14. Return of execution.
15. Issuing execution.
16. Levying execution.
17. Selling goods taken on execution.
18. Constable not to purchase goods sold under execution.
19. Body to be taken on execution, for want of goods.
20. Party committed on execution, may have benefit of acts for relief of insolvent debtors.
21. Proceedings against constable, for failure of duty under execution, 494-7.
 table of fees, 498.
 taking excessive fees, 498.
 explanation of terms used in the Act, 498.
 duration of Act, 498.
 forms of writs and appeal bond, 499.
- II. *Of the persons who may, and those who may not sue or be sued ; and herein, of the Joinder of Parties.*
 1. *Who may, and who may not, sue or be sued.*
 in what cases an alien friend may sue or be sued, 500.
 when and how idiots, lunatics, and deaf and dumb persons may sue or be sued, 501.
 husband and wife cannot sue each other, 501.
 when a married woman may, and when she may not sue or be sued alone, and when the husband alone may sue or be sued, 501.
 suing for the services of a child under 21 years, 501.
 in what cases infants shall be liable on their contracts, and when otherwise, 501.
 one partner cannot sue another, for money, goods, or services on account of the partnership, 502.
 2. *Of the Joinder of Parties.*
 where joint parties must all join, or be joined in an action, 502.
 on joint and several contract, either one alone, or all may be sued, 502.

SUMMARY TRIALS, (*continued.*)

where the husband and wife must join, or be joined in an action ; and where he alone may sue, or she may join, 502.

III. *Of the time limited by law for the recovery of Debts and establishing matters of defence.*

limitation of actions for debts by statute 32 G. 2, except in certain cases, 502.

cases in which the statute of limitations, applies, 503.

of the exception respecting accounts between merchants and tradesmen, 503.

promise or acknowledgement within six years, revives the debt, 504.

where acknowledgment by one of joint parties, will bind each and all, 504.

IV. *Order and manner of proceeding in instituting and conducting Summary Actions.*

where only a *summons* can be issued, 505.

Form of affidavit, where a *capias* is required, 505.

directions,—concerning service of writ,—arrest and bailing,—return of writ,—hearing cause,—adjourning trial,—establishing demand and defence,—witnesses and evidence,—judgment,—and appeal, 505.

V. *The several grounds of Action, in general, &c. and herein, of the Statute of Frauds.*

1. *Of Promissory Notes.*

description of such note, 507.

statute making them negotiable, 508.

what notes are negotiable, 508.

notes which cannot be negotiated, being payable on a contingency, 508.

promissory note must be payable for money only, 509.

payable on an event certain, is good, 509.

joint and several notes, 509.

consideration of note, 509.

note is good without the words "value received." Also, without a subscribing witness, 509.

time of payment not named, note is payable immediately, 509.

name of maker, 509.

place of payment, 509.

concerning negotiability of notes, 509.

SUMMARY TRIALS, (*continued.*)

who may indorse, 510.
note payable to bearer, transferable by mere delivery, 510.

notice of non-payment, 510.
alteration of note or bill, 510.

Evidence in action on note.

For plaintiff—when production of note may be dispensed with, 510.

how it shall be proved, 510.

proof in explanation, 511.

admission of one of joint makers, sufficient in action against the other, 511.

proving by subscribing witness, or otherwise, 511.

proof, where subscribing witness is dead, 511.

admission of party to a note, 511.

For defendant—cases in which a note shall be void, 512.

verbal agreement to renew note, cannot be given in evidence, 512.

rules concerning bills, apply, in general, to notes, when indorsed, 512.

statute against usury, 512.

2. *Orders or Inland Bills.*

what rules concerning notes equally govern as to bills, 512.

nature of an order, or bill, 513.

infant, party to a bill, 513.

acceptance by one partner, binds all, 513.

words "value received" not requisite, 513.

omission of words "or order", 513.

usurious security does not extinguish legal debt, 513.

bill for illegal consideration, void, 513.

concerning acceptance, 513.

notice of non-acceptance, 514.

notice of non-payment, 514.

receiving part payment, 514.

Evidence in Action on Bill.

proving hand-writing, 514.

when acceptor is a witness, 514.

when indorser is a witness, 514.

3. *Goods sold and delivered.*

selling goods on a credit, 514.

check producing nothing, no discharge of demand for goods, 515.

SUMMARY TRIALS, (*continued.*)

delivering part of goods under a contract, 515.
 goods obtained by fraud may be sued for as sold,
 &c. 515.

price not named, value may be recovered, 515.
 delivery of goods, 515.

Evidence in Actions, &c.

who cannot be a witness to prove delivery, 516.
 proving bad quality of goods, 516.

party's book of accounts no evidence for him ;
 but may be against him, 516.

4. *Work and Services.*

where action for work need not be on special
 agreement, 516.

work varying from original agreement, 516.

master may recover for the work of apprentice,
 enticed away, or harboured, 517.

recovery may be had, for work done for third
 person, at defendant's request, 517.

concerning wages of a servant, when discharged
 without cause, and when for misbehaviour, 517.

work may be proved bad, or of little value, or of
 none, 517.

5. *Money paid and expended.*

surety may recover from principal, the money
 he paid for him, 517.

so may bail, from their principal, 518.

as to consent of party for whom money is paid,
 518.

contribution in the case of joint parties, 518.

recovery in case of payment on illegal transac-
 tion, 518.

6. *Money had and received.*

action for, must be founded in equity, 518.

money received without authority, 518.

— paid under a mistake, 518.

— recovered by a judgment, 519.

— paid voluntarily, 519.

— due in conscience, 519.

— paid without consideration, 519.

— obtained by compulsion, 519.

— paid, without delivery of thing contracted
 for, 519.

— paid to an agent, 519.

— paid on illegal transactions, 519.

7. *Necessaries furnished, Freight, Awards, and
 certain other grounds of action.*

SUMMARY TRIALS, (*continued.*)

remarks as to actions before justices, to recover for necessities, 519.

infant, when liable for necessities, 520.

no recovery from infant, for goods supplied him to trade with, 520.

when husband is liable, and when not, for necessities for wife, 520.

necessaries for a ship, 521.

when master is liable for medical attendance on servant, 521.

Freight—who shall be liable for it, 521.

Award—submission may be without writing, 521.

award conclusive upon parties, as to all matters enquired into, within the submission, 521.

submission and award must both be proved, in an action to recover sum awarded, 521.

when notice of award and demand of payment are requisite, 521.

certain other cases in which actions may be brought before justices, 521.

8. *Account Stated.*

proof in actions thereon, 522.

infant cannot bind himself by account stated, 522.

recovery thereon, only where a debt actually exists, and a precise sum is admitted, 522.

9. *Statute of Frauds.*

section thereof, relating to promise to answer for debt, default, or miscarriage of another, 522.

concerning original credit given, 522.

verbal and collateral promise, 523.

promise, on forbearance of suit, against another, not binding, 523.

promise, on condition of discontinuing a suit for other cause than a debt is binding, 523.

verbal promise when under a legal obligation, is good, 524.

consideration must be good, to make written promise for another, binding, 524.

agreements not to be performed within a year, 524.

directions and remarks, 524.

VI. *The Defendant's Set-Off.*

enactments concerning setting off mutual debts, 525.

debt sued for, and the one set off must be due in the same right, 526.

SUM

SUM

Sunday
Superv
SURE

II

SUMMARY TRIALS, (continued.)

debt barred by the statute of limitations cannot be set off, 526.

VII. Of Judgments, and the Proceedings attending and following the same, and herein,—Of Appeals.

directions as to making up judgment, taxing costs, and preserving memorandum of judgment, 526.

table of fees by 3 G. 4, c. 30, 526.

how fees shall be taxed and allowed, 527.

directions and remarks concerning an appeal, 527.

as to giving security, on appealing, 528.

taking out execution, 528.

when execution may be issued after appeal, 528.

what goods, &c. shall not be taken on an execution, 529.

SUMMONS. Where proper, instead of a warrant, 529.

party appearing on summons, must wait till justice is ready to hear cause, 530.

personal service requisite, unless expressly dispensed with, 530.

should be served at least 3 days before day for appearance, 530.

Form of summons, 530.

Sunday, see *Lord's Day*, 298.

Supervisors, see *Public Grounds*, 383.

SURETY FOR THE PEACE and GOOD BEHAVIOUR.

I. For what cause it shall be granted.

authority and duty of justices on the subject, 531.

shall be granted, upon just cause of fear of corporal hurt, or burning house, 531.

also for threat of imprisonment, 531.

demanded, merely through malice or vexation, may be denied, 532.

shall not be granted for fear of harm to servants or cattle, 532.

may for threats of hurt to a wife or child, 532.

shall be granted only for fear of present or future harm, 532.

rioters, common breakers of the peace, and certain other offenders, may be bound to the good behaviour, 532.

II. At whose request, and against whom it shall be granted.

who may demand it, 532.

shall be granted to infant under 14 years, 533.

not to or against insane person, at his own request, 533.

SURETY FOR THE PEACE, &c. (continued.)

against whom, surety shall be granted, 533.

III. In what Manner it shall be granted.

proceedings, when party is before the justice, and when absent, 533.

cannot be enjoined under a penalty, 533.

no commitment until surety required, and refused, 533.

oath requisite, 533.

affidavit on part of defendant, cannot be received, 533.

of warrant to bring up the party, 533.

supersedes by finding sureties before arrest, 534.

IV. How the Peace Warrant shall be executed.

who shall execute it, 534.

breaking open doors to arrest, 534.

before whom the party shall be carried, 534.

supersedes on surety being given, 534.

commitment on refusal to find sureties, 534.

insufficient sureties, 534.

sureties dying, 535.

binding anew, on breach of recognisance, 535.

V. Of the Recognisance of the Peace.

form and force of recognisance, 535.

for what time party may be bound, 535.

forfeiting recognisance, 535.

excuse for not appearing at sessions, 536.

forfeiture by violence, 536.

by unlawful assembly, threats, &c. 536.

where actual violence is no forfeiture, 536.

discharging recognisance, 536.

continuing recognisance, 536.

death of party demanding surety, 537.

Forms of Complaint, Warrant, Commitment, Recognisance, and Discharge, 537.

Suspicion of Felony, see Arrest, 14, also Warrant, 579.

SWEARING, (Profane.) Statute prescribing punishment for it, 541.

Forms, on proceedings for the offence, 542.

T.

Tanners, see Hides, 231.

TAVERNS. Preliminary remarks, 545.

I. Certain Regulations concerning Taverns ; by several Statutes.

accommodations in taverns, 546.

TAV

Taxes
Tenan
Theft
THIS

Threa
Timbe
Tolls,
TOW

TAVERNS, (*continued.*)

selling goods therein, prohibited, with certain exceptions, 546.

no magistrate to hold a tavern license, 546.

what quantity of spirituous liquor may be sold at one time, in a tavern, 546.

II. *Other Matters relating to Inns and Taverns, in general.*

innkeepers bound to receive guests, and may be prosecuted for refusing, 547.

guest or goods may be detained for diet, 547.

detaining for pasturage, 547.

liability of innkeeper for goods of guest, 547.

guest stealing goods, for his use in inn, 547.

Taxes, see Poor, 347, and Rates, 386.

Tenant, see Landlord and Tenant, 278.

Theftbote, see Larceny, 294.

THISTLES. Statute, directing regulations to be made to prevent their growth, 548.

Threatening Letters, see Letters Threatening, 295.

Timber, see Lumber, 307.

Tolls, see Grain, 226.

TOWN OFFICERS. Statute 5 G. 3, c. 1, directing the appointment of,—surveyors of bounds and overseers of poor,—town clerk,—constables,—surveyors of highways,—fence viewers,—clerks of market,—pound keepers,—cullers and surveyors of fish,—surveyors of lumber, &c.—sealers of leather,—guagers of casks,—and hogreaves, 549.

finer for refusing to accept office or misbehaving, 549.

filling up vacant office, 550.

note respecting appointment of surveyors of highways, 550.

statute, 17 G. 3, c. 1, directing appointment of surveyors of hay, 550.

statute, 32 G. 3, c. 4, for appointment of measurers of corn, salt, coals, and lime, and inspectors of bricks; and imposing fine for not accepting office, or for misbehaviour, 550.

general statute of 51 G. 3, c. 24, directing appointment of such number of town officers as may be deemed requisite, 551.

[For appointment of inspectors of smoked herrings, see title,—Fish; and for appointment of Supervisors of Public Grounds, see title,—Public Grounds.]

directions as to the recovery of fines on town officers, 551.

TOWNSHIP LINES. Statute, directing the running thereof, and imposing fine on surveyors for neglect of duty, 552.

act for raising money, to defray expense of running such lines, 552.

directions as to prosecutions for fines, 553.

TREASON. Provincial enactment concerning the offence, 553.

how a justice shall proceed on a charge thereof, 553.

bare words do not amount to treason, 554.

no accessaries, but all are principals, 554.

misprision of treason, 554.

TREASURERS, (County.) Enactment for appointing them, 554.

Treasury Notes. See *Titles*,—*Forgery*, 218, and *Larceny*, 291.

Trees, (destroying,) see *Trespases*, 563.

TRESPASSES.

I. *Regulations concerning Fences, and of the recovery of Damages for Trespases by Cattle.*

enactments of 3 G. 4, c. 32, 555.

what fences shall be deemed lawful, 555.

proceedings, where cattle break enclosures and do damage, 555.

building and maintaining fences between adjoining lands, 556.

fence need not be kept on wood, barren, or burnt land, 556.

what rivers, &c. shall be considered a sufficient fence, 556.

application to sessions from the judgment of a fence viewer, 556.

where owner of cattle shall be liable for damage done by them, although fence is defective, 557.

recovering damages not exceeding £3, before one justice, 557.

prosecutions to be within one year, 557.

directions as to recovery of penalties, 557.

II. *Impounding Cattle, trespassing; and herein of Rescue, Pound Breach, and Replevin.*

impounding cattle and proceedings thereon, 558.

rescuing cattle in custody for trespass, 559.

breaking pound, 559.

replevying, and proceedings thereon, 559.

Form of writ of replevin, 559.

commitment for rescue, on failure of distress, 559.

directions as to prosecutions, 560.

TRESPASSES, (continued.)

- III. *Regulations concerning Cattle going at large.*
 sessions to make regulations to prevent trespasses
 by cattle, 560.
 fine for transgressing regulations, and how to be
 recovered, 560.
 seizing and selling swine going at large, 561.
 directions, 561.
- IV. *Destroying Fences, Walls, &c.*
 Punishment for injuring or removing fences, &c.
 561.
 fine for injuring railing or wall on sides of public
 square, bridge, &c. 561.
- V. *Trespasses on Commons.*
 enactment imposing penalty for the same, and how
 to be recovered, 562.
 execution for such penalty, 562.
- VI. *Persons trespassing on enclosed ground.*
 enactment imposing fine for such offence, and di-
 recting mode of recovery, 562.
 Directions as to prosecutions, 563.
- VII. *Trespasses by cutting down, injuring, or carrying
 away Trees.*
 cutting down or injuring trees on private lands, 563.
 cutting down or injuring ornamental trees on sides
 of public squares, &c. 563.
 limitation of fines for cutting down or injuring trees
 on private lands, to be recovered before one
 justice, 564.
 directions as to recovery of fines, 564.
- VIII. *Proceedings after Judgment against a Trespasser.*
 all penalties recovered under Act of 3 G. 4, c. 32,
 to be levied as in cases of debts, and by same
 form of execution, 565.
 Forms of Summons and Warrant, 565.

V.

VAGRANTS.

- I. *Who shall be deemed Vagrants, Idle and Disorder-
 ly Persons, &c.*
 statutes, directing that idle and disorderly persons,
 beggars, and certain others, shall be committed
 to house of correction, 567.
 soldiers, seamen of the navy, and certain others
 travelling without a pass, to be deemed idle and
 disorderly, 568.

VAGRANTS, (*continued.*)

other persons who shall be deemed such, and how to be punished, 568.

II. *Of their Apprehension, Examination, and Punishment.*

apprehending them, and fine for neglecting to do so, when required, 569.

searching for deserters, and disorderly persons, apprehending and examining them, 569.

binding out strolling beggars, and other disorderly persons, 570.

examination as to place of settlement, 570.

directions as to recovery of fines, 570.

III. *Neglect of duty concerning Vagrants, Rescuing them, or Assisting their Escape.*

enactment, prescribing punishment for such offences, 571.

IV. *Punishment for lodging Vagrants.*

enactment prescribing it, 571.

V. *Charges of their Conveyance and Maintenance.*

constable or other person apprehending them, shall be rewarded out of the county treasury, 572.

how they shall be maintained in work-house, 572.

VI. *Appeal.*

party aggrieved by any act of a justice, may appeal to the next sessions, 572.

VII. *Treble Costs.*

shall be allowed to person succeeding in suit against him, for any thing done under the act, 573.

Forms of Order, Warrant, &c. with Directions, 573.

W.

Wages, see *Servants*, 443.

Waggons, see *Carriages*, 81.

WARRANT.

I. *Search Warrant.*

general search warrant, not lawful, 575.

not to be granted on a *bare surmise*, 575.

when to be granted to search suspected places, 576.

time of searching, 576.

to whom warrant shall be directed, 576.

entering house to search, the doors being open, 576.

breaking open doors, admittance being refused, 576.

WARRANT, (continued.)

how goods found on search, shall be disposed of, 576.

proceedings as to party in whose possession goods are found, 576.

Forms of information and search warrant, 577.

II. Warrant to Apprehend.

manner of apprehending an offender, 578.

1. For what causes it may be granted, and where a summons is most proper, 578.

2. What is to be done previously to granting it, 579.

3. How far it is grantable on suspicion, 579.

4. *The Form of the Warrant*, 579.

place where made, to be stated, 579.

to whom to be directed, 579.

in whose name, and in what style to be made, 580.
cause of granting it, to be specially stated therein, 580.

name of party to be arrested, must be mentioned in it, 580.

day and year of making it, must be stated, 580.

must be under hand and seal of the justice, 581.

duration of warrant, 581.

arrest may be, after the sessions next ensuing the date thereof, 581.

Form of warrant, 581.

5. *Indorsement into another County.*

enactment directing it, 581.

before whom party, taken on indorsed warrant, shall be carried, 582.

Form of such indorsement, 582.

WEIGHTS AND MEASURES. Statute, directing how standards thereof shall be established, 583.

assaying them, by clerks of market, 583.

penalty for selling by any, not marked, 583.

inspecting them, 583.

penalty for selling by any, less than standard, 584.

no goods, except hay, to be sold by steelyards, 584.

clerks of market, every 3 months, to inspect beams, scales, weights, measures, and steelyards, and assay and stamp them, 584.

appropriation of fines and forfeitures, 584.

directions as to prosecutions for fines, 584.

WELLS AND PUMPS. Statute concerning the raising of money for making and repairing them, and prescribing punishment for injuring them, 585.

directions regarding prosecutions, 585.

- WIFE.** Committing crime in company with, or by coercion of her husband, 586.
 is liable for offences not capital, 586.
 cannot commit felony in taking her husband's goods, 586.
 is punishable for a riot, trespass, or other wrong, 586.
 female servant marrying, shall serve out her time, 587.
 may demand sureties of the peace against her husband, and he against her, 587.
 cannot be bound herself by recognisance, but her sureties only, 587.
- WITNESSES.** Enactment, that poor witnesses, in cases of felony, shall be allowed their fees from the county treasury, 587.
 enactment, that witnesses, residing more than 5 miles from a court, may be summoned by a justice, and giving form of such summons, 587.
 punishment of witnesses for not attending court or justice according to summons, 588.
 witness to be paid his fees, before giving evidence, 588.
 Form of Summons for a witness, 588.
- WOODS.** Regulations to be made, annually, in sessions, concerning setting fires in clearing land, 589.
- Work Houses*, see Bridewell, 75.
- WRECK.** Statute of the 41 G. 3, c. 14, 1. V. 446, for securing wrecked vessels and goods, &c. 589.
 plundering or destroying wrecked vessels or goods, 590.
 injuring or obstructing person endeavouring to save property, 590.
 putting out false lights, 590.
 stealing wrecked goods, under value 40 shillings, 590.
 searching for stolen shipwrecked goods, and securing the offender, 590.
 commanding assistance to preserve persons and property, and punishment of such as refuse it, 591.
 rewarding persons who assist at wrecks, or in securing property, 591.
 how goods saved shall be disposed of, when no person appears to claim, and to pay expences, 592.
 property in charge of another, not to be interfered with, 593.
 persons endeavouring to destroy, or cause the loss of vessels, to suffer death, 593.
 act to be read publicly, by the clerk of the peace, at opening of every general sessions, 593.
 directions as to prosecutions for offences, 593.
 Form of Order, for reward to persons rendering assistance, 594.

r by coercion

's goods, 586.
wrong, 586.
er time, 587.
her husband,

ce, but her

es, in cases
es from the

than 5 miles
justice, and

court or jus-

dence, 588.

in sessions,
589.

V. 446, for.
589.

goods, 590.
ng to save

lings, 590.
nd securing

and proper-
591.

in securing

no person
592.

interfered

he loss of

peace, at

3.

ng assist-